JUSTICE

ACTUALITÉS REPORT

Volume 28 No. / N° 2
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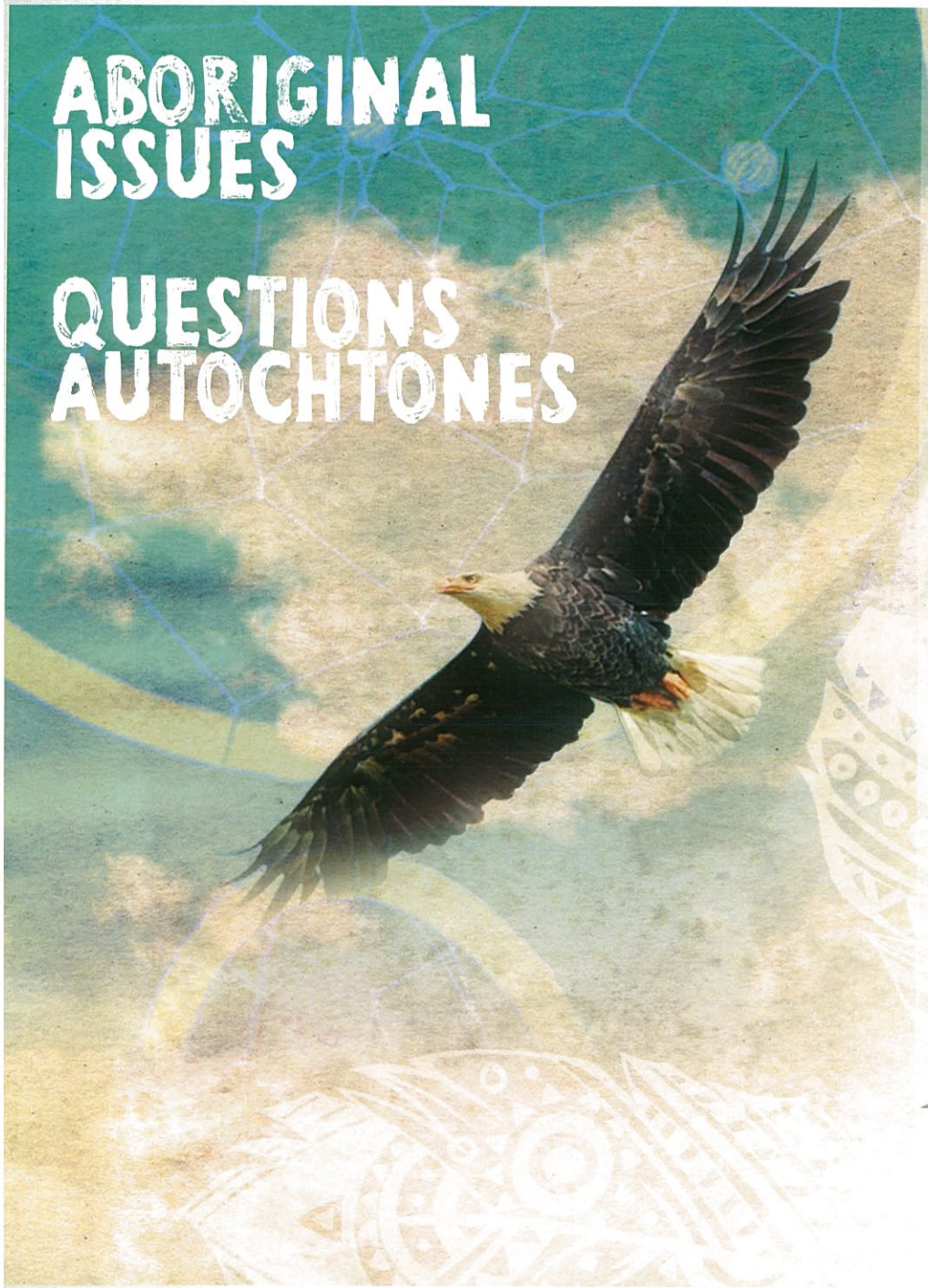


ABORIGINAL ISSUES

QUESTIONS AUTOCHTONES

2013

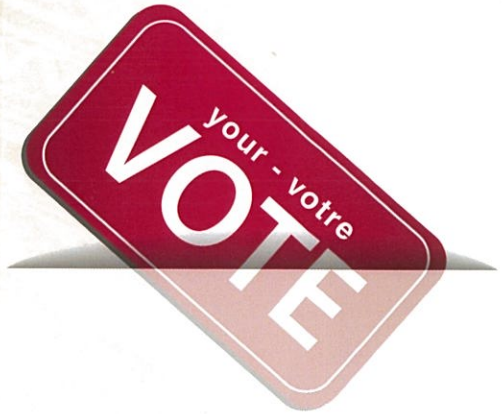
ELECTION OF BOARD OF DIRECTORS • CCJA
ÉLECTION DU CONSEIL D'ADMINISTRATION • ACJP

IN THIS VOLUME

Ballot form and a biographical note from each candidate as well as information on the voting process (also available at www.ccja-acjp.ca as of June 30).

DANS CE VOLUME

Vous pourrez prendre connaissance du bulletin de vote et des renseignements au sujet des candidats à l'élection au conseil d'administration pour 2013-2015 dans ce numéro d'*Actualités-Justice* (aussi disponible à l'adresse www.ccja-acjp.ca à partir du 30 juin).



CANADIAN CRIMINAL JUSTICE ASSOCIATION •• ASSOCIATION CANADIENNE DE JUSTICE PÉNALE

JUSTICE
ACTUALITÉS REPORT

Volume 28 No. / N° 2

The **JUSTICE REPORT** contains information of value to Association readers and the public interested in matters related to the administration of justice in Canada. Opinions expressed in this publication do not necessarily reflect the Association's views, but are included to encourage reflection and action on the criminal justice system throughout Canada. For more information on the activities of the CCJA, please contact: •• L'**ACTUALITÉS-JUSTICE** renferme des renseignements utiles aux lecteurs de l'Association et au public qui s'intéressent aux questions relatives à l'administration de la justice au Canada. Les opinions qui sont exprimées ne reflètent pas nécessairement les vues de l'Association, mais y figurent afin d'encourager à réfléchir et à agir sur la justice pénale dans tout le Canada. Pour obtenir de plus amples renseignements sur les activités de l'Association, veuillez communiquer avec :

CANADIAN CRIMINAL JUSTICE ASSOCIATION
ASSOCIATION CANADIENNE DE JUSTICE PÉNALE

101-320, av. Parkdale Ave., Ottawa,
Ontario, Canada K1Y 4X9

613 725.3715 613 725.3720
ccja-acjp@rogers.com •• www.ccja-acjp.ca

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Nancy Wright Editor •• Rédactrice

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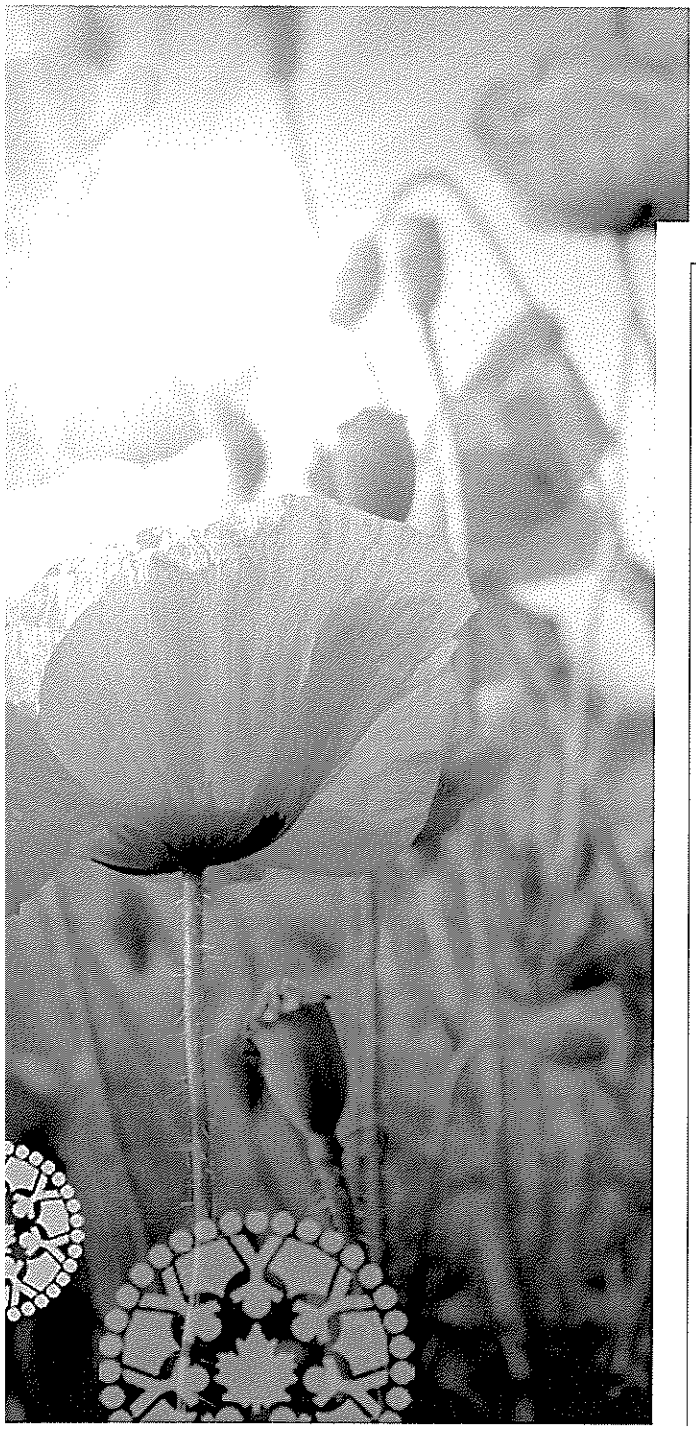

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EDITORIAL

BY IRVING KULIK, Executive Director of the CCJA

Those of you who have been members of CCJA for a long time have noticed the continuous improvement of the *Justice Report* over the course of the last eight years or so. In particular however, with the arrival of Nancy Wright at the CCJA offices, this publication has grown immeasurably. The addition of **The Student Space**, for example, creates a whole new dimension in not only allowing students the opportunity to be published, but indeed actively inviting them to share their views, begin to take part in CCJA member activities and hopefully take on leadership roles in the CCJA of tomorrow.

The thematic focus of *Justice Report* subject matter continues to expand in all directions. The highlight of this issue focuses upon Aboriginal issues. The future will bring themes related to police perspectives, victims' issues and other topics of contemporary concern. We, of course, always invite you the reader, to submit ideas and articles for publication. Under Nancy's guidance, the *Justice Report* will always be one of the best publications in its class.

This issue is one of the largest we have ever published as it includes important information regarding the election cycle, Congress 2013 and a tribute to the late Don Demers.

In 2009 we updated our governing by-laws and thereby also modified our election process, with the primary goal of allowing every member to vote directly for their choice of Board Directors. In addition, Directors are now elected for a period of four years to allow for better continuity, all the while allowing any CCJA member to seek a nomination for Board membership. In the previous *Justice Report* we issued a call for nominations. In this issue you will find the bios of each of the nominated candidates where election is required. We urge you to review these bios and cast your ballot by July 30 for your choices in each and every category. You can do so by regular (snail) mail, fax or email. Your choices for the Board of Directors of the CCJA will be faced with interesting challenges over the course of the next four years, as we see continuing legislative initiatives in the field of criminal justice but within an environment of reduced Government budgetary flexibility. Please take advantage of your right to vote.

For so many of us, working in criminal justice, whether in corrections, parole, policing or the courts, is so much more than a posting. It is usually a career lasting 25 to 35 years. It has always struck me, however, how quickly we forget those who, in their short time on this planet, made such an indelible impact on criminal justice. In this issue we seek to rectify these oversights by publishing a broad tribute to Don Demers. While I never did work with Don, I did have the pleasure of meeting him on several occasions and was always struck by the modesty and good nature of this gentleman. Certainly the tributes from his many friends contained herein speak volumes to the quality and contributions of Don Demers. We thank all the contributors.

Finally, I must again urge all members to consider attending our upcoming Congress 2013 which will be talking place in Vancouver, commencing on October 2 at the beautiful Hyatt Regency Vancouver. Early-bird registration ends on July 1 and you can do everything online. We hope to see many of you there soon.

ÉDITORIAL

PAR IRVING KULIK, Directeur général, ACJP

Les membres de longue date de l'ACJP auront remarqué l'amélioration constante d'*Actualités-Justice* au cours des quelque huit dernières années. Cette publication a notamment connu un essor incommensurable avec l'arrivée de Nancy Wright au sein de l'équipe de l'ACJP. Par exemple, l'ajout de **L'Espace étudiant** lui confère une toute nouvelle dimension, non seulement en permettant à des étudiants de voir leurs articles publiés, mais aussi en les invitant de manière active de faire valoir leurs opinions, en leur permettant de participer aux activités des membres de l'ACJP et, espérons-nous, de jouer un rôle de chef de file au sein de l'ACJP de demain.

L'approche thématique d'*Actualités-Justice* continue de nous mener dans toutes les directions. Le présent numéro met l'accent sur les enjeux autochtones. D'autres numéros à venir se pencheront sur certains thèmes axés sur les perspectives policières, les enjeux liés aux victimes et d'autres sujets afférents à des préoccupations contemporaines. Bien sûr, nos lecteurs sont toujours invités à nous faire part de leurs idées ou à nous soumettre des articles pour publication. Sous la gouverne de Nancy, *Actualités-Justice* demeurera toujours l'une des meilleures publications du genre.

Ce numéro est l'un des plus volumineux que nous ayons jamais publié; vous y trouverez de l'information relative à notre processus électoral, au Congrès 2013 ainsi qu' un hommage au regretté Don Demers.

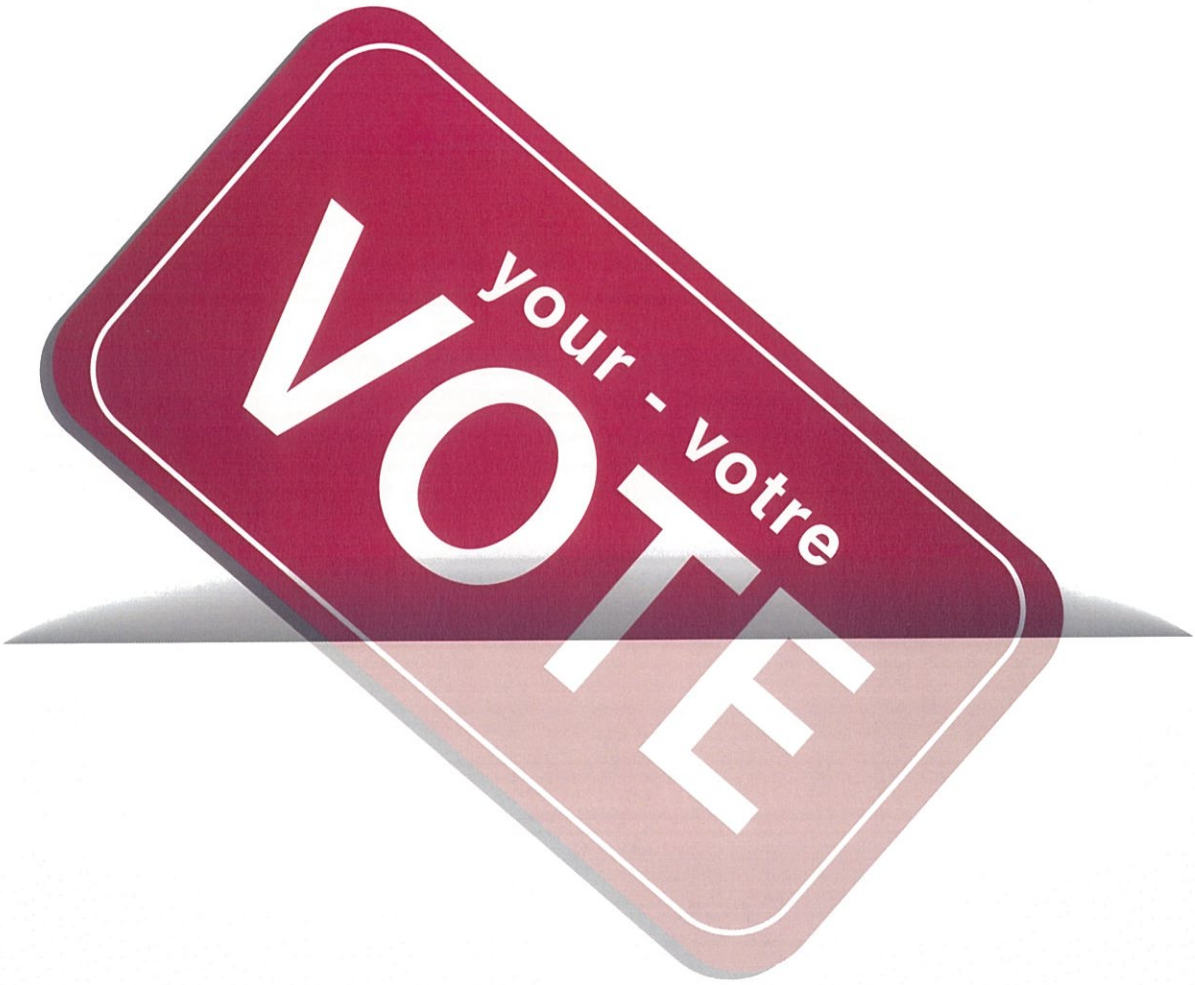
En 2009, nous avons modifié nos règlements administratifs et, par la même occasion, notre processus électoral, en ayant comme but premier de permettre à chaque membre de voter directement pour les administrateurs de leur choix. En outre, les administrateurs sont maintenant élus pour un mandat de quatre ans afin d'assurer une meilleure continuité, tout en permettant aux membres de l'ACJP de se porter candidats à l'élection au conseil d'administration. Le dernier numéro d'*Actualités-Justice* contenait un appel de candidatures. Vous trouverez dans le présent numéro quelques notes biographiques relatives au parcours personnel et professionnel des candidats proposés, là où il faut procéder à une élection. Nous vous vous incitons vivement à prendre connaissance de ces notes biographiques et à remplir votre bulletin de vote avant le 30 juillet dans chacune des catégories. Il vous est loisible de le faire par la poste, par télécopieur ou par courriel. Les administrateurs de l'ACJP que vous élirez auront à relever des défis intéressants au cours des quatre prochaines années. Nous anticipons en effet que d'autres initiatives législatives viendront affecter le domaine de la justice pénale, mais dans le cadre d'un contexte budgétaire gouvernemental moins souple. Veuillez vous prévaloir de votre droit de vote.

Pour bon nombre d'entre nous qui œuvrons dans le domaine de la justice pénale, soit dans les services correctionnels, la libération conditionnelle, les services policiers ou les tribunaux, il s'agit de tellement plus qu'une simple affectation. Cela correspond habituellement à des carrières s'échelonnant sur une période de 25 à 35 ans. Toutefois, j'ai toujours été frappé par le fait qu'on oublie si rapidement ceux et celles qui, au cours de leur bref passage sur cette terre, ont eu une influence indéniable sur la justice pénale. Nous nous efforçons dans ce numéro de corriger cette situation en publiant un grand hommage à Don Demers. Bien que je n'aie jamais travaillé avec lui, j'ai eu le bonheur de le rencontrer à maintes reprises et j'ai toujours été frappé par la modestie et la bonhommie de ce gentleman. Les nombreux éloges de ses amis, publiés dans ce numéro, témoignent certes de la qualité et de la contribution de Don Demers. Merci à tous ceux qui nous ont soumis un texte.

Enfin, je me dois d'inciter vivement tous nos membres à participer à notre imminent Congrès 2013 qui se déroulera à Vancouver à compter du 2 octobre prochain au magnifique Hyatt Regency Vancouver. Les tarifs de l'inscription hâtive ne s'appliqueront que jusqu'au 1er juillet et il est possible de tout régler en ligne (http://www.ccja-acjp.ca/cong2013/form.pdf). Nous anticipons avec plaisir d'y retrouver bon nombre d'entre vous.

2013

ELECTION OF BOARD OF DIRECTORS • CCJA
ÉLECTION DU CONSEIL D'ADMINISTRATION • ACJP



BALLOT FORM | BULLETIN DE VOTE PAGE 11

ALSO AT / AUSSI AU

WWW.CCJA-ACJP.CA

TO: All members of the CCJA
FROM: Hugh Osler, Chair, Nominating Committee

There were 11 positions to be filled on the Board of Directors. Through your nomination, three positions were elected by acclamation (Manitoba, Newfoundland/Labrador, and Saskatchewan). There will be an election for **ALBERTA, BRITISH COLUMBIA**, and the **4 NATIONAL "AT LARGE"** positions.

You are encouraged to try to ensure a balance on the Board by supporting candidates from all areas of the country and various fields of endeavour, also taking into account other factors such as gender and language.

Please vote. The nominees are listed on the BALLOT form (p.11), in alphabetical order. A brief biographical note is included for each one.

À: Tous les membres de l'ACJP
DE: Hugh Osler, président, Comité des candidatures

Il y avait 11 postes à combler au Conseil d'administration. Par vos mises en candidatures, trois postes ont été élus par acclamation (Manitoba, Terre-Neuve/Labrador, et Saskatchewan). Il y aura une élection pour l'**ALBERTA**, la **COLOMBIE-BRITANNIQUE** et les **4 POSTES POUR "L'ENSEMBLE DU PAYS"**.

Veuillez, par votre vote, vous efforcer de parvenir à un équilibre au sein du Conseil en appuyant des candidat(e)s de toutes les régions du pays et de divers domaines, en tenant compte aussi d'autres facteurs, tels le sexe et la langue.

Vous trouverez la liste des candidats (par ordre alphabétique) sur le BULLETIN DE VOTE (p.11). Une brève note biographique a été fournie pour chacun(e).

WE MUST RECEIVE YOUR VOTE NO LATER THAN JULY 30, 2013: | NOUS DEVONS RECEVOIR VOTRE BULLETIN DE VOTE AU PLUS TARD LE 30 JUILLET 2013 :

FAX | TÉLÉCOPIEUR : 613 725.3720 E-MAIL | COURRIEL : wright_nancy@rogers.com MAIL | POSTE : Nancy Wright, CCJA, 101-320 Parkdale Avenue, Ottawa, ON (K1Y 4X9)

BIOGRAPHICAL NOTES | NOTES BIOGRAPHIQUES

Alberta

GREGORY, Kathryn

Personal and Professional Background

As a 20-year member of the CCJA and the ACJA, including the presidency of both organizations, I believe that my experience and familiarity with CCJA S committees, structure, congresses and vision would provide a significant contribution to the board.

Further, as the new Executive Director of the Prairie Region Halfway House Association (PRHHA). My professional associations and colleagues would be of direct benefit to the CCJA.

Antécédents personnels et professionnelles

Je suis membre de l'ACJP et de l'AJPA depuis 20 ans et j'ai été présidente de ces deux organisations; je crois, par conséquent, que mon expérience et ma familiarité avec les comités, les structures, les congrès et la vision de l'ACJP me permettraient d'apporter une contribution significative au Conseil. En outre, en tant que nouvelle directrice générale de l'Association régionale des maisons de transition des Prairies (ARMTP), mes contacts professionnels et mes collègues profiteraient directement à l'ACJP.

VAN SLUYTMAN, Margot

Personal and Professional Background

My background, I describe as follows: Life from murder to meaning, which not only includes several published books & articles about justice as a deeply personal lived experience, thereby affecting the public/political terrain, but also my recently completed MA of Arts and thesis Sawbonna: JUSTICE AS LIVED EXPERIENCE. I will soon be embarking on a PhD journey to research further how it is we come to embody justice.

Antécédents personnels et professionnelles

Je décris mes antécédents comme suit : "Life from murder to meaning" [la vie depuis le meurtre jusqu'à remettre un sens à sa vie]; cela a une incidence sur la scène publique et politique, bien au-delà de la publication de nombreux livres et articles traitant de justice en tant qu'expérience profondément personnelle. J'ai récemment complété une Maîtrise ès arts et une thèse intitulée Sawbonna: JUSTICE AS LIVED EXPERIENCE. J'entreprendrai des études doctorales dans le but d'approfondir comment on en vient à incarner la justice.

British Columbia | Colombie-Britannique

PHELPS, Jim

Personal and Professional Background

After serving as a Psychologist in Regina Correctional Institution, I worked as a Warden and managed Parole Offices, then spent 20 years as Deputy Commissioner, Correctional Service of Canada, in the Prairies, Ontario and Ottawa. I also was assigned for 3 Years to the Quebec Correctional Services. After retirement, I was Executive Director of Big Brothers & Sisters for 7 years. My education is Master of Arts in Psychology.

I have been a Member of the Board of CCJA for many years and served as Treasurer and Chaired many Committees, including Chair of the Public Education Resources Committee at this time. Re-election to the Board would permit me to continue to make a significant contribution to the improvement of the Canadian Criminal Justice System and the objectives of the CCJA.

Antécédents personnels et professionnelles

Après avoir œuvré comme psychologue au Regina Correctional Centre, j'ai travaillé comme directeur d'établissement et gestionnaire de bureau de libération conditionnelle, avant d'œuvrer pendant 20 ans comme sous-commissaire du Service correctionnel du Canada dans les régions des Prairies et de l'Ontario, puis à Ottawa. J'ai également été envoyé en détachement aux Services correctionnels du Québec pour une période de 3 ans. Après avoir pris ma retraite, j'ai été directeur général du programme des grands frères et des grandes sœurs pendant 7 ans. Je détiens un diplôme de maîtrise ès arts en psychologie.

Je suis membre du conseil d'administration de l'ACJP depuis de nombreuses années; j'y ai occupé le poste de trésorier et assuré la présidence de nombreux comités, dont, à l'heure actuelle, celle du Comité des ressources d'éducation du public. Ma réélection au conseil d'administration me permettrait de continuer à contribuer de manière significative à l'amélioration du système de justice pénale au Canada et à l'atteinte des objectifs de l'ACJP.

VARESH, Tim

Personal and Professional Background

Tim Veresh is the Executive Director of the John Howard Society of the Lower Mainland and Executive Officer of the John Howard Society of BC. He is very involved in promoting social justice, building community capacity and has worked within the voluntary sector for over thirteen years. Tim is currently involved as an advisor with Douglas College Youth Criminal Justice Program, Vancouver Board of Trade Community Safety Committee, Drug Treatment Court, BC Alliance for Mental Health/Illness and Substance Misuse and the Forensic Alliance. He also volunteers as a Board of Director with, The Provincial Association of Community and Residential Agencies, BC Criminal Justice Association and United Community Services Cooperative. Tim's past volunteer contributions include being a Board of Director with the Community Social Services Employers Association, Vantage Point, BC Yukon Halfway House Association and previous advisor with the UBC Innocence Project.

Antécédents personnels et professionnelles

Tim Veresh est le directeur général de la Société John Howard du Lower Mainland et membre du comité exécutif de la Société John Howard de la Colombie-Britannique. Il est très impliqué dans la promotion de la justice sociale et dans le développement des capacités communautaires et il œuvre depuis plus de 13 ans dans le secteur bénévole. Il agit présentement comme conseiller auprès du programme de justice pour les mineurs de Collège Douglas, auprès du Comité de sécurité communautaire du Vancouver Board of Trade, du tribunal de traitement de la toxicomanie, de l'Alliance intéressée à la santé mentale/maladie mentale et au mésusage de substances de la Colombie-Britannique et auprès de l'Alliance des services médicolégaux. Il est aussi membre bénévole des conseils d'administration de la Provincial Association of Community and Residential Agencies [association provinciale des organismes communautaires et résidentiels], de l'Association de justice pénale de la Colombie-Britannique ainsi que de la United Community Services Cooperative [Coopérative unie de services communautaires]. Il a œuvré comme bénévole par le passé en tant que membre du Conseil de la Community Social Services Employers Association, de Vantage Point, et de la BC Yukon Halfway House Association; il avait précédemment agi comme conseiller auprès de l'Innocence Project de l'Université de la Colombie-Britannique.

National "At Large" | Dans l'ensemble du pays

ANTONACCO, Gina — ONTARIO

Personal and Professional Background

Gina Antonacci is the Dean of the School of the Social and Community Services at Humber College in Toronto, where she provides academic leadership to certificate, diploma and degree programs in the areas of Criminal Justice, Human Services and Fire Services. Her career began as a Probation and Parole Officer in Toronto with Ontario's (then) Ministry of Correctional Services. She then moved to the Ministry's training branch as a Senior Staff Development Officer, where she remained until she joined Humber College as a faculty member in the Law and Security Administration and Police Foundations Programs. Gina has an undergraduate degree in Criminology (University of Toronto), a Master's degree in Criminal Justice Administration (Niagara University) and is currently a doctoral student at the University of Toronto. She is the author of a textbook on Criminal Justice recently published by McGraw-Hill. Gina's research interests include human rights, correctional education and leadership training.

Antécédents personnels et professionnelles

Gina Antonnaci est doyenne de la *School of the Social and Community Services* du *Humber College* de Toronto. Elle y assure la direction pédagogique du certificat, du diplôme et de programmes menant à un grade dans les domaines de la justice pénale, des services sociaux et des services d'incendies. Elle a entrepris sa carrière comme agente de probation et de libération conditionnelle à Toronto pour le compte de ce qui s'appelait alors le ministère des Services correctionnels. Puis elle est passée à la Direction de la formation du ministère à titre d'agente principale de développement du personnel. Elle a occupé ces fonctions jusqu'à ce qu'elle se joigne au *Humber College* en qualité de professeure dans les programmes d'Administration du droit et de la sécurité ainsi que des fondations policières. Gina détient un diplôme de premier cycle en criminologie de l'Université de Toronto, une maîtrise en administration de la justice pénale de l'Université Niagara et elle est actuellement doctorante à l'Université de Toronto. Elle est l'auteure d'un manuel sur la justice pénale, qui vient d'être publié chez McGraw-Hill. Ses intérêts en recherche incluent les droits de la personne, la formation correctionnelle et la formation en leadership.

BRAITHWAITE, John — BRITISH COLUMBIA • COLOMBIE-BRITANNIQUE

Personal and Professional Background

I am honoured to have served our Association as President and Board member, most recently on the Policy Review Committee, the Public Awareness and current Congress Planning Committees. Two career highlights include the founding of LifeLine and the development of the Vancouver Island affiliate of our Association.

All my involvement reflects a belief that an effective democracy requires an informed citizenry. With experience, imagination and enthusiasm, I pledge to develop our ability to inform,inspire and involve Canadians to achieve a system that offers humane, effective justice for all that stresses restoration, rehabilitation and reform.

Antécédents personnels et professionnelles

Ce fut un honneur pour moi de servir notre Association en tant que président et membre du conseil d'administration et, plus récemment, comme membre du Comité d'examen des politiques, du Comité chargé d'assurer la sensibilisation du public et la visibilité de l'ACJP et du Comité organisateur du Congrès. Deux des faits saillants de ma carrière ont été la Fondation de LifeLine (Option-Vie) et la mise sur pied d'une affiliée de notre Association sur l'île de Vancouver.

Toute mon implication s'appuie sur la conviction qu'une démocratie efficace exige que la population soit bien informée. Je m'engage avec expérience, imagination et enthousiasme à contribuer à notre capacité d'informer, d'inspirer et d'amener les Canadiennes et les Canadiens à parvenir à un système qui offre un système de justice humain et efficace pour tous et qui et met l'accent sur la réparation, la réadaptation et la réforme.

BRATZER, David — BRITISH COLUMBIA • COLOMBIE-BRITANNIQUE

Personal and Professional Background

David Bratzer is a reform-oriented police officer. While off-duty, he volunteers as a board member of Law Enforcement Against Prohibition (LEAP). In 2009 and again in 2010, he testified against mandatory minimum sentencing legislation before the Senate Committee on Legal and Constitutional Affairs. In 2013, he was awarded a Diamond Jubilee medal for leadership in justice reform.

David has some experience with web design and social media campaigns. He helped Law Enforcement Against Prohibition with its social media efforts on Facebook (87,000 supporters) and Twitter (18,000 followers).This is an area in which he hopes to support the CCJA.

Our justice system is undergoing many changes, and David feels the CCJA is well-positioned to facilitate dialogue about the consequences of these reforms. Our Association has a worthy and far-reaching purpose: "It exists to promote rational, informed, and responsible debate in order to develop a more humane, equitable, and effective justice system." His hope, if elected as a Director At Large, is to contribute to the success of our Association by working collaboratively with members across the country.

David welcomes questions and comments from members - visit DavidBratzer.ca/CCJA to drop him a line.

Antécédents personnels et professionnelles

David Bratzer est un policier axé sur la réforme. Il possède une certaine expérience en conception Web et au chapitre de campagnes menées dans les médias sociaux. Il a contribué aux efforts de communication dans les médias sociaux de la *Law Enforcement Against Prohibition* (LEAP); attirant 87 000 amis sur Facebook et 18 000 fidèles sur Twitter. Il espère pouvoir aider l'ACJP de cette même manière. En 2009, et encore une fois en 2010, il a comparu devant le Comité sénatorial permanent des Affaires juridiques et constitutionnelles pour s'opposer au projet de loi sur les peines minimales obligatoires, à l'étude par le Sénat. En 2013, il a reçu la Médaille du jubilé de diamant pour son leadership en matière de réforme de la justice.

Notre système de justice pénale subit actuellement de nombreux changements et David est d'avis que l'ACJP est bien placée pour faciliter le dialogue sur les conséquences de ces réformes. Le but de notre Association est louable et de grande portée : « Elle vise à promouvoir une réflexion éclairée et responsable afin de contribuer au développement d'un système de justice plus humain, équitable et efficace. » S'il est élu pour représenter l'ensemble du pays, David espère contribuer au succès de l'Association en collaborant avec des membres de tout le pays.

David se fera un plaisir de répondre aux questions des membres et de recevoir leurs commentaires. Consultez le site DavidBratzer.ca/CCJA pour lui écrire.

DELISLE, Claire — ONTARIO

Personal and Professional Background

Claire Delisle recently obtained her PhD in criminology from the University of Ottawa where she now teaches. Her dissertation on prisoner resistance and leadership development in the IRA and Sinn Fein was named one of the best three in Leadership Studies by the International Leadership Association. From 2009 until 2011, she was Senior Executive Assistant at CCJA, where she provided assistance to the membership and Board of Directors, and also edited the *Justice Report*. She is a member of the CCJA's Policy Review Committee. In 2011, she left to work briefly in the NDP's Policy Unit. Her briefs were Justice, Public Safety and Treasury Board. Since 2005, she has been involved in criminal justice, first as a member of three different Lifers groups (in Kingston and Montréal), and as a member and organizer of ICOPA, the International Conference on Penal Abolition. Prior to that she was a trade unionist in Montreal and has also been involved in supporting the Irish peace process since 1993.

Antécédents personnels et professionnelles

Claire Delisle a récemment obtenu un doctorat en criminologie de l'Université d'Ottawa, où elle enseigne actuellement. L'*International Leadership Association* a dit de sa dissertation traitant de la *résistance des prisonniers et du développement du leadership au sein de l'Armée républicaine irlandaise et du Sinn Fein* qu'il s'agissait de l'une des trois meilleures dissertations à avoir été rédigée dans le cadre des études en leadership. De 2009 à 2011, elle a été adjointe administrative principale à l'ACJP où elle fournissait une assistance aux membres et au conseil d'administration, en plus d'assurer la rédaction du magazine *Actualités-Justice*. Elle est membre du Comité d'examen des politiques de l'ACJP. Elle a quitté en 2011 pour occuper un emploi de courte durée au sein de l'Unité des politiques du NPD. Elle a produit des mémoires sur les sujets suivants : la justice; la sécurité publique; le Conseil du Trésor. Elle est active dans le domaine de la justice depuis 2005, d'abord en tant que membre de trois groupes de condamnés à perpétuité à Kingston et Montréal, puis en tant que membre et organisatrice de l'*International Conference on Penal Abolition* (ICOPA). Elle œuvrait antérieurement comme syndicaliste à Montréal et elle travaille depuis 1993 à soutenir le processus de paix en Irlande.

FRANKS, Maria G. — NOVA SCOTIA • NOUVELLE-ÉCOSSE

Personal and Professional Background

- Executive Director of the Legal Information Society of NS
- Degrees in Law & Journalism
- I have worked in the field of public education about the law, the justice system and legal rights and responsibilities for more than 30 years.
- Board member of the CCJA & THE NSCJA, currently serving as CCJA Treasurer, 2007 recipient of the Public Education Award.
- Member of the Atlantic Community Safety Association & the Public Legal Association of Canada.

Antécédents personnels et professionnelles

- Directrice générale de la Legal Information Society de la Nouvelle-Écosse
- Diplômée en droit et en journalisme
- J'ai œuvré pendant plus de 30 ans en éducation du public sur des sujets tels que le droit, le système de justice ainsi que les droits et responsabilités de chacun
- Je suis membre du Conseil de l'ACJP et de l'AJPNE. J'occupe actuellement le poste de trésorière de l'ACJP. Lauréate du Prix d'éducation du public de l'ACJP en 2007.
- Membre de l'Association de sécurité communautaire de l'Atlantique et de l'Association canadienne des organismes d'éducation et d'information juridiques

GAGNON, Michel — QUEBEC

Personal and Professional Background

Michel Gagnon is the Executive Director of Maison Crossroads Corporation in Montreal. This agency manages a Community Residential Facility (Maison St-Léonard), Service Oxygène, as well as the Service Oxygène Sattelite Apartments for elderly offenders referred by the Correctional Service of Canada. He has been a member of the Board of Directors of the Canadian Criminal Justice Association for the past three years. He is actively involved in the Activities of l'Association des services de rehabilitation sociale du Québec, the St. Leonard Society of Canada and the Québec Society of Criminology.

Antécédents personnels et professionnelles

Michel Gagnon est directeur général de la corporation Maison Cross Roads à Montréal. Cet organisme à la responsabilité d'un Centre résidentiel communautaire (Maison St.-Leonard), du Service Oxygène et des Appartements satellites oxygène pour personnes judiciarisées âgées du Service correctionnel du Canada. Il est membre du conseil d'administration de l'Association canadienne de justice pénale depuis trois ans. Il contribue activement aux activités de l'Association des services de réinsertions sociales du Québec, de la Société St-Leonard du Canada et de la Société de criminologie du Québec.

GREGORY, Kathryn — ALBERTA

Personal and Professional Background

As a 20-year member of the CCJA and the ACJA, including the presidency of both organizations, I believe that my experience and familiarity with CCJA S committees, structure, congresses and vision would provide a significant contribution to the board.

Further, as the new Executive Director of the Prairie Region Halfway House Association (PRHHA). My professional associations and colleagues would be of direct benefit to the CCJA.

Antécédents personnels et professionnelles

Je suis membre de l'ACJP et de l'AJPA depuis 20 ans et j'ai été présidente de ces deux organisations; je crois, par conséquent, que mon expérience et ma familiarité avec les comités, les structures, les congrès et la vision de l'ACJP me permettraient d'apporter une contribution significative au Conseil. En outre, en tant que nouvelle directrice générale de l'Association régionale des maisons de transition des Prairies (ARMTP), mes contacts professionnels et mes collègues profiteraient directement à l'ACJP.

MCKEAGUE, Frances — ONTARIO

Personal and Professional Background

I am a long standing member of the Canadian Criminal Justice Association and actively involved as a Director at Large on the Board of Directors since 2009. I am seeking a second term on the Board.

Retired from the Ontario Public Service having held progressively responsible positions in both Corrections and Policing. Previously a Probation and Parole Officer, Corrections Staff Development Officer, Manager of Community Corrections, Manager of Crime Prevention and Policing Standards in Ontario. I was directly involved in the development of risk assessment procedures for probation and parole clients included in the supervision standards manual. In addition, I managed the design and development of a number of guidelines for Ontario police services to address the *Ontario Police Services Act*, Adequacy Standards for Policing. Led the evaluation of a number of policing programs including the Domestic Violence Guidelines. Managed upwards of $33 M in transfer payments to Ontario municipalities regarding police crime prevention programs.

I was a previous member of the Ontario Association of Criminal Justice and served as the President.

As a member of the CCJA Board, I developed the Board Members Manual and participate on the Public Awareness and Visibility Committee.

Since retiring, I continue my interest and involvement in criminal and social justice activities. This includes serving on the CCJA Board of Directors, volunteering at an Out of the Cold Program in Toronto. I am currently involved with the Azrieli Foundation and Ryerson University, Sustaining Memories Project. I recently partnered with a Holocaust survivor to write her memoir which will eventually become part of an anthology.

I hold a B.A (Honours) and a Master in Criminology (Applied).

Antécédents personnels et professionnelles

Je suis membre de longue date de l'Association canadienne de justice pénale et suis activement impliquée comme membre du conseil d'administration depuis 2009. J'aimerais être élue au Conseil pour un deuxième mandat.

Je suis retraitée de la Fonction publique de l'Ontario où j'ai occupé des postes comportant des responsabilités croissantes, tant dans les services correctionnels que dans le secteur policier. J'ai successivement été agente de probation et de libération conditionnelle, agente de développement du personnel correctionnel, gestionnaire des services correctionnels communautaires, gestionnaire de la prévention de la criminalité et des normes en matière de police en Ontario. J'ai participé à l'élaboration des procédures d'évaluation du risque, comprises dans le manuel des normes de surveillance applicables aux clients sous probation ou libération conditionnelle. J'ai en outre géré la conception et l'élaboration de plusieurs lignes directrices applicables aux services policiers en Ontario en vue d'assurer la conformité aux normes de services policiers découlant de la *Loi sur les services policiers de l'Ontario*. J'ai dirigé l'évaluation de nombreux programmes policiers, incluant les lignes directrices applicables en matière de violence conjugale. J'ai administré au-delà de 33 M$ en paiements de transfert aux municipalités de l'Ontario au titre des programmes policiers de prévention de la criminalité.

J'ai précédemment été membre de l'Association de justice pénale de l'Ontario, dont j'ai été présidente.

À titre de membre du Conseil de l'ACJP, j'ai élaboré le manuel à l'intention des membres du Conseil et ai siégé au Comité chargé d'assurer la sensibilisation du public et la visibilité de l'ACJP.

PAIEMENT, Robert — QUÉBEC

Personal and Professional Background

I am currently employed as a Senior Project Officer within a public health agency. I have extensive experience in both direct service and applied research, strategic and operational reviews, change management processes, organizational development as well as policy and program management work with municipal and federal governments departments and the voluntary sector. As a private consultant,

I have undertaken work on a variety of issues pertaining to the non-profit sector and various government departments in the area of criminal justice and social development including youth justice, conflict resolution, crime prevention, Aboriginal justice and violence prevention. I hold two Bachelor Degrees in both Criminology (Honours) and Political Science.

Antécédents personnels et professionnelles

J'œuvre actuellement comme agent principal de projet pour un organisme de santé publique. Je possède une expérience approfondie dans les domaines suivants : les services de première ligne, la recherche appliquée, les examens stratégiques et opérationnels, les processus de gestion du changement, le développement organisationnel, de même que la gestion des politiques et des programmes au sein d'administrations municipales et fédérale et d'organismes bénévoles. En qualité d'expert-conseil indépendant, j'ai travaillé sur divers dossiers relatifs au secteur sans but lucratif et à divers ministères gouvernementaux dans les domaines de la justice pénale et du développement social, notamment dans les secteurs de la justice des mineurs, de la résolution de conflit, de la justice autochtone et de la prévention de la violence. Je détiens deux baccalauréats, l'un avec spécialisation en criminologie et l'autre en science politique

J'ai été très impliqué depuis de nombreuses années comme membre de conseils d'administration et comme bénévole auprès de plusieurs organismes sans but lucratif, dont l'ACJP, l'Association de justice pénale de l'Ontario, Prévention de la violence Canada et *Peacebuilders International*. Je suis désireux de siéger au Conseil de l'ACJP afin de contribuer à l'avancement des buts de l'Association. Je crois que mes antécédents personnels et professionnels dans le domaine de la justice pénale contribueraient à mettre en valeur le travail de l'Association, sans compter mes connaissances poussées et la passion que je nourris pour la justice pénale.

2013

ELECTION OF BOARD OF DIRECTORS • CCJA

ÉLECTION DU CONSEIL D'ADMINISTRATION • ACJP

BALLOT - BULLETIN DE VOTE

BRITISH COLUMBIA - COLOMBIE-BRITANNIQUE

Please select only ONE candidate / Veuillez choisir UN candidat seulement

- ☐ PHELPS, Jim
- ☐ VARESH, Tim

ALBERTA

Please select only ONE candidate / Veuillez choisir UN candidat seulement

- ☐ GREGORY, Kathryn
- ☐ VAN SLUYTMAN, Margot

NATIONAL "AT LARGE" - DANS"L'ENSEMBLE DU PAYS"

Please select a maximum of FOUR candidates / Veuillez choisir un maximum de QUATRE candidats

- ☐ ANTONACCI, Gina (ON)
- ☐ BRAITHWAITE, John (BC / C.-B.)
- ☐ BRATZER, David (BC / C.-B.)
- ☐ DELISLE, Claire (ON)
- ☐ FRANKS, Maria (NS - N.-E.)
- ☐ GAGNON, Michel (QC)
- ☐ MCKEAGUE, Francis (ON)
- ☐ PAIEMENT, Robert (BC/ C.-B.)

JUSTICE PÉNALE ET PE

OU COMMENT SORTIR DE LA PÉNALISATION DES PROBLÈMES SOCIAUX ?

PAR MYLÈNE JACCOUD,
professeure à l'école de criminologie, Centre de recherche en droit public, Université de Montréal

Cet article a déjà été publié dans la revue *Porte ouverte*, volume XXV, numéro 1, 2012, p.20). L'ACJP remercie l'Association des services de réhabilitation sociale du Québec (ASRSQ) de nous avoir donné les permissions de reproduire cet article... http://www.innu-meshkenu.com/en/files/PO-autochtones-11.pdf

This article was published previously in *Porte ouverte* (vol. XXV, No.1, 2012, p.20) http://www.innu-meshkenu.com/en/files/PO-autochtones-11.pdf. The CCJA wishes to thank l'Association des services de réhabilitation du Québec (ASRSQ) for granting us permission to reproduce this article.

La surreprésentation endémique et récurrente des Autochtones dans les services correctionnels est toujours préoccupante. Alors qu'ils ne représentent que 4 % de la population canadienne, les détenus d'origine autochtone forment 20% de la population carcérale masculine dans les établissements fédéraux. La surreprésentation des femmes est encore plus dramatique : les femmes autochtones constituent 33% de la population carcérale féminine. C'est dire qu'une détenue fédérale sur trois est d'origine autochtone ! (Sécurité publique, 2012). Rien de nouveau puisque les premières traces de la surreprésentation des Autochtones sont déjà repérables dans les années 1960.

Ces données, alarmantes en soi, sont révélatrices des problèmes qui se vivent en amont du système correctionnel mais surtout en amont du système pénal lui-même. Le plus inquiétant dans ces statistiques réside en l'aggravation de la situation en dépit des politiques et des innovations apportées par les pouvoirs publics, tant à l'échelle nationale que provinciale depuis des décennies. Car on ne peut reprocher aux pouvoirs publics de n'avoir rien tenté pour améliorer le sort des Premiers peuples dans leur rapport à l'administration de la justice. Une lecture culturaliste mais aussi structurelle des rapports entre Autochtones et administration de la justice a favorisé le déploiement d'une panoplie d'initiatives visant à réduire l'écart culturel entre justiciables autochtones et justiciers non autochtones d'une part, mais aussi à redonner du pouvoir aux Autochtones dans la gestion de l'administration de la justice d'autre part. Des services de police autochtone ont ainsi été implantés, l'administration de la justice s'est vue décentralisée par la création de tribunaux itinérants, des pratiques de consultation de la population autochtone (cercles de sentences) ont été introduites par certains juges, des structures mitoyennes chargées d'assurer un pont culturel entre justiciables autochtones et justiciers allochtones ont été créées, le personnel judiciaire non autochtone a suivi des formations interculturelles, des programmes fondés sur les traditions spirituelles autochtones ont été introduits dans les pénitenciers, des initiatives de justice réparatrice ont été encouragées, une politique d'« autochtonisation » de l'administration de la justice a vu le jour et des programmes de déjudiciarisation ont été instaurés. Le Code criminel a été modifié pour que les juges utilisent des sentences alternatives en lieu et place de l'incarcération en raison des facteurs particuliers qui concernent les Autochtones (notamment la discrimination systémique). Mais la portée de ces mesures s'est avérée décevante.

Les réponses sociopénales ne parviennent pas à réduire la criminalité en milieu autochtone et encore moins la prise en charge institutionnelle des justiciables autochtones. Car dans les faits, l'intensification de la réponse pénale (qui s'est effectuée par la ramification des structures étatiques mais aussi par l'autochtonisation des structures de justice – cas des forces policières notamment) a surtout rendu les comportements perturbateurs plus visibles et plus susceptibles d'être acheminés dans le réseau sociopénal.

Ces réponses ont comme principales lacunes leur pénalocentrisme et leur inéluctable inadéquation avec une réalité pourtant évidente : la fonction de la justice pénale n'est pas de résoudre les problèmes sociaux mais de dénoncer, condamner, tenter de dissuader et de réinsérer des personnes qui ont transgressé la loi. Tant que l'on ne comprendra pas cette évidence, on poursuivra la pénalisation des problèmes sociaux que connaissent avec amplitude les communautés autochtones.

Car la criminalité des Autochtones est ancrée dans l'histoire d'une marginalisation politique, socioéconomique et culturelle des Premiers peuples qui mine les capacités autorégulatrices des collectivités et des individus. Tant et si bien que les individus sont aux prises avec des difficultés et des souffrances personnelles (santé mentale, dépendances, victimisations) qui facilitent l'expression de relations conflictuelles, abusives et souvent violentes captées par les services policiers et dont les chances de rétention dans le système pénal sont maximales.

UPLES AUTOCHTONES

Le système pénal intervient face à une transgression, à un code de vie normative alors que le problème réside davantage dans le mal-être et ses conséquences sur les personnes concernées. Nous sommes bien devant l'incongruité d'un système de justice pénale tenu de réagir à des conduites sociales qui résultent de problématiques sociales et non d'un déficit d'intégration et de respect de codes moraux et sociaux. Protéger peut avoir du sens mais punir ne sert à rien.

La pénalisation des problèmes sociaux des communautés autochtones est une impasse dont il faut s'extirper rapidement si l'on souhaite réellement agir de manière constructive. La solution ? Il faut agir à la fois en amont pour reconstruire la régulation sociale dans les communautés et en aval pour transformer les pratiques sociopénales de manière à ce que celles-ci s'orientent vers une prise en charge qui protège, soutient, répare et accompagne la reconstruction des personnes abusées et abusives. Il convient en particulier de renforcer les interventions de première ligne de manière à ce que les personnes mises en danger dans une collectivité puissent rapidement être protégées et recevoir les soins et le soutien nécessaires.

Ceci requiert du financement récurrent, de la formation et du soutien constants. Il faut également procéder au transfert des pouvoirs en matière de gestion de l'administration de la justice (autonomisation des forces policières, établissement de comités de justice, de tribunaux et d'établissements de détention autochtone) et établir clairement les ententes de partenariat entre nations pour intervenir dans les cas complexes (crime organisé par exemple).

L'autonomisation permettra ainsi aux Autochtones de développer les approches holistiques centrées sur la guérison et la résolution des problèmes dans une dynamique communautaire dans laquelle l'individu et la communauté sont intrinsèquement liés. Elle permettra aussi, graduellement, de faire comprendre que la dénonciation d'un comportement ne participe pas de l'exclusion et de la stigmatisation des responsables lorsque ceux-ci sont pris en charge par des structures favorisant le soutien, l'écoute et les soins thérapeutiques. Une société aux prises avec des problèmes de drogues et d'alcool est mieux servie par des interventions psychosociales que par des réponses répressives.

Ce qui ne signifie pas bien évidemment que des interventions contraignantes visant la protection de la société (mise à l'écart temporaire des individus constituant une menace) n'ont pas leur place, pour autant que cette mise à l'écart ne nécessite pas l'éloignement et la rupture des relations entre ces individus et leur communauté. Ces principes encadrant les conditions d'une reconstruction des collectivités autochtones mettent l'accent sur la nécessité de sortir du pénalocentrisme pour développer des politiques et des pratiques sociales plus larges favorisant, par exemple, la formation en organisation communautaire, la mise en place de groupes de discussion sur la parentalité, la sensibilisation des jeunes aux problèmes de dépendance aux substances psychoactives. Ces principes nécessitent impérativement que des ressources soient allouées pour favoriser le développement structurel des communautés (logements, loisir, éducation, services de santé notamment). Mais par-dessus tout, les pouvoirs publics non autochtones (mais aussi autochtones) doivent comprendre et surtout accepter que les solutions à court et long terme émaneront des Autochtones eux-mêmes. ••

LIEN À L'ARTICLE, "Justice pénale et peuples autochtones ou comment sortir de la pénalisation des problèmes sociaux ?" qui a déjà été publié dans la revue *Porte ouverte*, volume XXV, numéro 1, 2012, p. 20) :

LINK TO ORIGINAL ARTICLE, "Justice pénale et peuples autochtones ou comment sortir de la pénalisation des problèmes sociaux ?", published by l'Association des services de réhabilitation sociale du Quebec (ASRSQ), in *Porte ouverte*, Volume XXV, No. 1, 2012, p. 20):

http://www.innu-meshkenu.com/en/files/PO-autochtones-11.pdf

Don, Thanks for the Memories

BY R.E. BOB BROWN,

Bob is a former Director of the Corrections Programme at the International Centre for Criminal Law Reform and Criminal Justice Policy and former District Director, and Area Director Vancouver Island Parole, Correctional Service of Canada. He is currently an independent criminal justice consultant working internationally, primarily in China and Africa.

After starting my criminal justice career as a Correctional Officer in 1974 at the Ottawa Carlton Detention Centre, in 1977 I started as a Living Unit Officer at Mission Medium Security Institution. But, this article is not about me. It is about Donald (Don) J. Demers who started his criminal justice career in 1973 as a Living Unit Development Officer at Drumheller Institution. The following reflections are not my memories but those of a few of Don's many, many criminal justice colleagues who had the pleasure, as did I, of interacting with him during his long and distinguished criminal justice career.

Donald (Don) J. Demers

Don was born in Ste. Anne, Manitoba on March 21, 1947. His wife Andrée Chénier sums it up well when she says that "Don left this life as he lived it, with great dignity in Victoria BC" — eight days shy of his 66th birthday.

Dan Denis and Don Demers: A lifetime of interaction, friendship and even competition!

Dan Denis, also an alumnus of Drumheller Institution cherishes his many interactions with Don. Their respective education, career and retirement paths crisscrossed from 1969 when they were both attended the University of Alberta until the summer of 2012 when they and their families came together at an RV Resort in Osoyoos, BC.

Don, Director General of Directorates (Solicitor General and Justice Canada)

"In 1977 Don and Dan competed for a Senior Counselor position at Grierson Centre in Edmonton. Don came in 1st, Dan placed 2nd. Unknown at the time, Don was also the successful candidate for a Research Officer position with the Programs Branch, Solicitor General Canada Secretariat in Ottawa. Don accepted this opportunity. That is how Don ended up in Ottawa and Dan became a Senior Counsellor at Grierson Centre." Dan also spent time in Ottawa when Don was Director General, Young Offenders Directorate, Solicitor General Canada (1983 to 1987) and Director General, Programs and Policy Directorate, Justice Canada (1987 to 1988). Both were also in Victoria when Dan was Deputy Warden at William Institution and Don Assistant Deputy Minister (ADM) Corrections Branch – BC (1995 to 2004).

From 2004 to 2006, Dan was Regional Director of the National Parole Board (NPB), while Don was Regional Deputy Commissioner, Correctional Service of Canada (CSC), both headquartered in Abbotsford.

Dan Denis knew Don as "a genuine person, a learned deep caring individual, a very private person, but always great fun to be with and around".

Jim Wolfe and Don's Passion for Youth Corrections as ADM, Manitoba – Corrections Branch

Don's career path saw him return to his home province of Manitoba following stints in Ottawa and prior to his stop in Victoria. From 1988 to 1995 Don was the ADM, Manitoba – Corrections Branch. During that period, a colleague was Jim Wolfe, Executive Director, Adult Correctional Services Manitoba Department of Justice-Correctional Services. Jim recalls that "Don's passion was for youth corrections given his extensive work in the development of the Young Offenders Act (YOA) and the Youth Criminal Justice Act (YCJA) through his Federal experience in Ottawa, which enabled him to help operationalize it in Manitoba. This was an ideal opportunity for Don to make it work at all levels and segments of Manitoba justice".

Jim also notes that "Don's greatest strength was his affable, personable and unpretentious way of dealing with everyone. This was the foundation for the way he managed. He was well respected and liked as a result. Don had a great sense of humour and had a tireless devotion to his family and his work. After he quit smoking he chewed on plastic coffee stir sticks at meetings grinding them to a pulp. We all remember that in Manitoba."

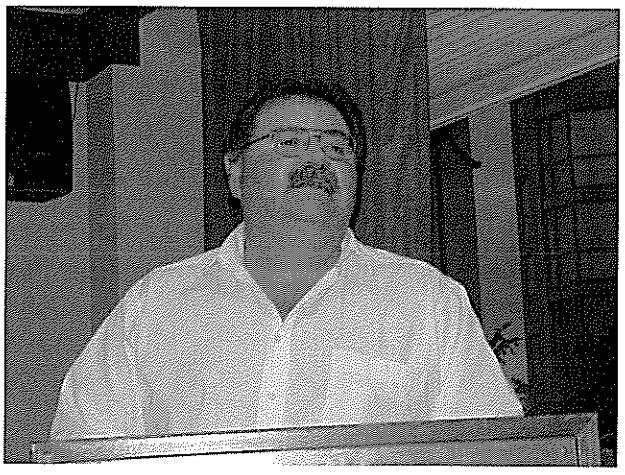
Bob Cormier, fond memories of Don at the 8th UN Congress on the Prevention of Crime and the Treatment of Offenders

Bob Cormier first met Don in Ottawa; however, one of his fondest memories involves Havana, Cuba in 1990. Both were delegates at the 8th UN Congress on the Prevention of Crime and the Treatment of Offenders. Bob was then Director of Corrections Research and Development, Solicitor General Canada and Don was ADM, Manitoba Corrections. Bob says Don's considerable experience and knowledge of both youth and adult corrections made him a great asset to the Canadian team, and he delivered a key speech for Canada at the Congress.

In addition to his expert contribution, Bob recalls that "Don brought another quality that endeared him to others. While he took his work responsibilities and accountability seriously, he didn't take himself too seriously. There was lightheartedness about him. So it was at the UN Congress when he suggested during a meeting of the Canadian Delegation that Canada should advance a resolution to outlaw accordion playing (with perhaps a particular reference to polka). This proposal prompted little debate but much laughter and enjoyment. He was a first-rate, dependable colleague and lots of fun to be around".

Bert Phipps and Brent Merchant: Memories from BC Corrections...

In the mid 1990's Don moved west and from 1995 to 2004 he was the ADM BC Corrections Branch situated in Victoria and from 2004 to 2006 the Regional Deputy Commissioner Pacific, Correctional Service of Canada located in Abbotsford. When Don left BC Corrections the new ADM BC Corrections was Bert Phipps who in turn was succeeded by Brent Merchant.



Bert and Brent reflect on Don's tenure.

Don guided the Branch with a steady hand and enjoyed the confidence of a number of cabinet ministers who served in the Attorney General and Solicitor General portfolios. He led a reorganization of the Corrections Branch that saw the transfer of young offender services to the new Ministry of Children and Family Development and the transition from a regional administration structure to a 'functional model' comprised of the Adult Custody and Community Corrections Divisions.

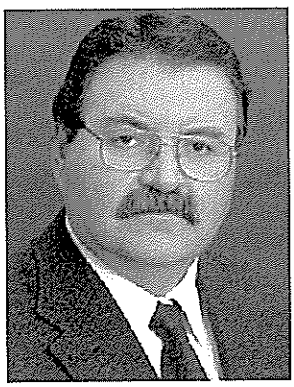
Don promoted evidence-based approach to offender programming

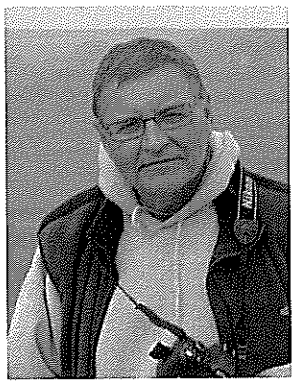
Don always stressed the importance of taking an evidence-based approach to offender programming and during his tenure cognitive behavioral programs taught by Probation Officers and Correctional Officers were introduced. During the latter stages of his time with B.C. Corrections, the consolidation of the Adult Custody Division from twenty facilities to the current nine correctional centres was undertaken. Don is remembered for his devotion to his family, his calm, low key manner and for his ability to maintain a keen sense of humour even during trying times.

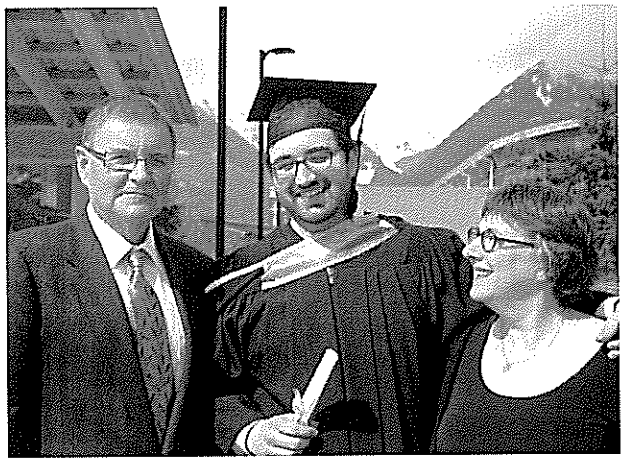
The International Scene

Brian Tkachuk, Don and the International Centre for Criminal Law Reform and Criminal Justice Policy

As noted above Don's presence was not only felt in Canada. Brian Tkachuk, while Director of the Corrections Programme at the International Centre for Criminal Law Reform and Criminal Justice Policy had the opportunity to involve Don in the work of the Centre and the privilege of travelling with him to Malta and China in 1998. Brian who is now the A/Executive Director at the Centre recalls Don "as an individual who, throughout his career, supported the many efforts within Canada to establish itself as a leader in the field of corrections and saw the importance of Canada, and in particular BC, sharing its knowledge and expertise with the global community". Outside of his academic and professional achievements what struck Brian the most was "Don's ability to remain humble and







unassuming in spite of his great physical presence. He was quick witted and despite the language and cultural barriers he was able to maintain his wry sense of humour that was not lost amongst his international colleagues and friends".

Dr. Vincent Yang remembers Don as a Canadian pioneer sharing best practices with Chinese reformers

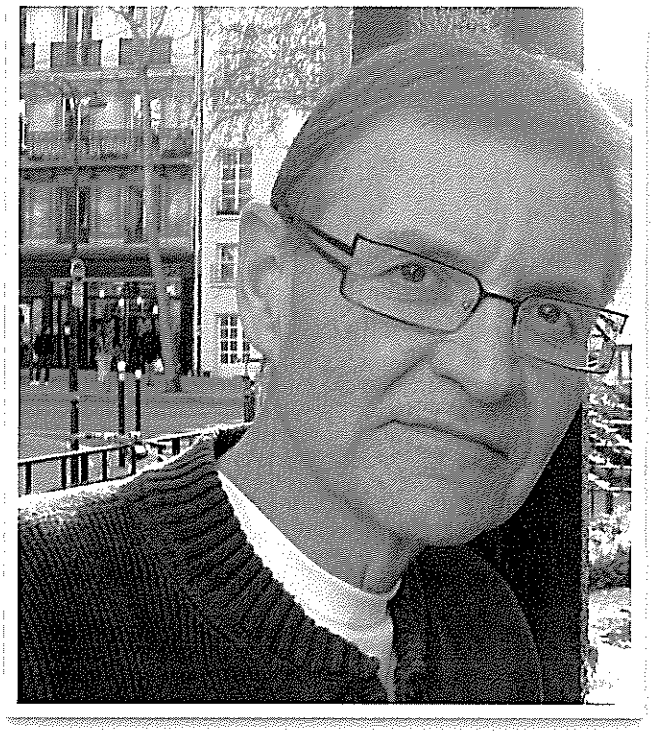
Dr. Vincent Yang was the Director of the China Program at the Centre when Don was a member of the 1998 delegation to Beijing. Vincent is currently a Professor and Chair of International Law, University of Saint Joseph, in Macau. He remembers Don for "his kind support of the Centre's Canada-China Criminal Justice Cooperation Program". Vincent highlights that "Canada was the first country in the world providing government funded technical assistance to the reform of the correctional system and the development of community corrections in China. Don will be remembered as one of the Canadian pioneers who helped Chinese reformers borrow Canada's best practices by generously sharing his knowledge and experience".

Renée Collette, the NPB and Don

Renée Collette, the former Executive Vice-Chairperson NPB remembers Don as a very professional and kind man with a great sense of humour. Dan Denis, a fellow Francophone who, as noted above, also at one time worked at NPB highlighted "what a sense of humour – a very dry wit, you would have sworn he was British, not French-Canadian!"

Keith Coulter: An honour to have worked with Don at CSC

Keith Coulter, a former CSC Commissioner worked with Don for the last three years of Don's time with CSC (2005 to 2008). Keith shared that "it was truly an honour" to have worked with him. "He was talented, dedicated, professional and wise. He was also considerate and kind. By



taking care of business so well he made the jobs of others like me much easier; by seeing others in such a positive way he helped bring out the best in the team; and, by using humor and a gentle touch he brought light even when things looked dark".

Anne Kelly, took over as Regional Deputy Commissioner – CSC Pacific Region when Don became CSC's SDC in Ottawa

Anne Kelly is currently CSC's Senior Deputy Commissioner (SDC) in Ottawa. I had the privilege of working with Anne in Ottawa (1999 to 2000). Anne took over from Don as the Regional Deputy Commissioner for CSC's Pacific Region after Don accepted the position as CSC's SDC in Ottawa (2006 to 2007). Anne recalls that "although Don came across as a quiet and reserved person, I realized that once one got to know him, Don's wonderful wit and dry sense of humour was a joy to be around. Don was always straightforward, honest and a man full of integrity". Anne indicated further that "I feel privileged to have had the wonderful opportunity of meeting, of knowing, and of working with Don. He was a great colleague and, more importantly, a true friend and I shall really miss him".

Thanks Don. Thanks for the memories. To Andrée, Don's wife, Gabriel Don's son and to the Demers family thanks for sharing Don with the Canadian provincial, territorial, federal and international criminal justice community. I think Brian said it best "Don will be sadly missed and fondly remembered". ••

DON DEMERS
TANT DE SOUVENIRS... MERCI!

Don Demers est né à Sainte-Anne (Manitoba), le 21 mars 1947 et, comme dit son épouse, Andrée Chénier, il s'est éteint comme il a vécu, avec une insigne dignité, à Victoria (Colombie-Britannique) – huit jours à peine avant son 66e anniversaire. Cet article, rédigé par R.E. (Bob) Brown, se veut un hommage à Don et nous présente en condensé les faits saillants et quelques photos de sa carrière distinguée, telle que l'ont évoquée les témoignages de quelques-uns de ses nombreux amis.

Nos souvenirs s'étalent depuis le temps passé par Don à l'Université de l'Alberta jusqu'en 1977, alors qu'il occupe un poste comme agent de recherche à la Direction des programmes au Secrétariat du ministère du Solliciteur général du Canada (SGC) à Ottawa, où il est subséquemment devenu directeur général de la Sous-direction des jeunes contrevenants (SGC) et de la Direction des politiques et des programmes à Justice Canada.

Don a fait profiter sa terre natale, le Manitoba, de son expertise. Au cours de son mandat comme sous-ministre adjoint de la Direction des services correctionnels du Manitoba, on se souvient de sa passion pour les services correctionnels à l'intention des jeunes, en regard du travail extensif qu'il a consacré à l'élaboration de la Loi des jeunes contrevenants (LJC) et la Loi sur le système de justice pénale pour les adolescents (LSJPA), de même que de son expérience fédérale à Ottawa, qui lui a éventuellement permis de contribuer à opérationnaliser cette loi au Manitoba. La grande force de Don était liée à sa façon affable, sympathique et sans prétention de traiter avec les gens. C'était là le fondement de son mode de gestion. Il était très respecté, avait un bon sens de l'humour et était inlassablement dévoué à sa famille et à son travail.

Alors qu'il occupait le poste de sous-ministre adjoint, il a été délégué au 8e Congrès des Nations Unies sur la prévention de la criminalité et le traitement des délinquants, Congrès qui s'est tenu à Cuba où il a livré un discours clé. On se souvient de lui comme d'un atout précieux de la délégation canadienne (services correctionnels à l'intention des jeunes et des adultes), d'un collègue fiable et de premier plan, et d'une personne sachant amuser son entourage.

Suivirent presque une décennie comme sous-ministre adjoint des Services correctionnels de la Colombie-Britannique et deux années au poste de sous-commissaire du Service correctionnel du Canada pour la Région de la Colombie-Britannique. Au nombre de ses autres réalisations notables, Don a dirigé une réorganisation en Colombie-Britannique qui a donné lieu au transfert des services à l'intention des jeunes contrevenants au ministère responsable du développement des enfants et des familles. Il était un fervent partisan des approches de programmation à l'intention des délinquants, fondées sur des données probantes. On se souviendra également de lui comme soutenant les efforts du Canada de s'affirmer comme chef de file dans le domaine des services correctionnels et comme l'un des pionniers canadiens ayant aidé les réformateurs chinois à emprunter certaines pratiques exemplaires du Canada en les faisant généreusement profiter de connaissances et son expérience.

THE INDIGENOUS EXPERIENCE

BY DOUG HECKBERT, Criminal Psychology & Behaviour, Centennial College

When I offered to contribute to this edition of *Justice Report*, which I had been informed would deal with Aboriginal issues, I wondered where to start, what to say, and how to craft my message.

Two comments I recently heard came to mind:

1: "How many more times do I have to hear about Native culture? I'm getting sick and tired with the excuses!"

2: "It is fundamentally immoral not to have a good understanding of the Aboriginal experience".

I then thought: where do I fit into relative to these comments? I concluded that these would be good end posts with which to frame my comments!

WHAT DO I BELIEVE?

I believe that learning/knowing of Aboriginal culture and experience is key for non-Aboriginal Canadians to fathom Aboriginal/Indigenous issues, in this case within a framework of criminal justice. It seems that certain preconceptions regarding the perceived 'inferiority' of the Native has entered mainstream Canadian thought via some of the early histories of Canada. To varying degrees, these preconceptions became embedded in Canadian culture and prompted among other failed initiatives the development of the residential school system. The intolerance of difference, while perhaps no longer operating at a collective or cultural level in Canada, persists in the minds of some individuals and is as far-reaching as it is well-documented. Native people have made great strides in overcoming misconceptions and stereotyping by making their voices heard, but the over-representation of Aboriginal people in Canadian justice system may be a cautious reminder that cultural intolerance and racial tensions may still be a contributing factor in the current Aboriginal experience.

MY JOURNEY TO UNDERSTANDING AND APPRECIATING THE INDIGENOUS EXPERIENCE

Maybe it will be helpful to outline my journey in coming to appreciate the Indigenous experience; this will include some testimonial comments as well as observations from some extraordinary colleagues and friends.

In many ways, this journey was framed by the Aboriginal people I have met and by two books: *Halfbreed* by Maria Campbell, her highly acclaimed Aboriginal autobiography of the 1970's, and *Reservations are for Indians* by Heather Robertson, which has become a classic. These two books were so successful at relating an untold history that they changed my way of thinking about "Indians" forever!

THE ROAD-ALLOWANCE PEOPLE

I grew up in a small east-central Alberta town where virtually everyone was Caucasian – a few Chinese and a few East Indian people were the only visible minorities. I recall from In elementary school that three Native kids were in my class for a while. Joe, Jimmy and Gilbert were terrific ball players so I tried to get them on my team whenever possible. I remember being enthralled to learn they lived year round in tents, out in the bush just east of town. Much later in life, it dawned on me that they had actually been some of the "Road Allowance" people that Maria Campbell writes about in *Halfbreed*.

Campbell's road allowance accounts help readers understand the humiliation and shame that led to alcoholism and drug addiction in many Métis communities, and to the ensuing struggles to restore families, culture and language. She informs readers that a road allowance constituted Crown land, which until a highway was built, was open to squatters. It was the Métis, the only Aboriginal group in Canada with no homeland at the time, who came to occupy road allowances. Campbell tells the history of the Métis after the Battle of

IS IT IMPORTANT TO KNOW ABOUT THIS?

Batoche, when they fled to northern Saskatchewan and Alberta and as far south in the United States as Louisiana. Always on the move, they were often burned out of their homes, evicted from land, pushed out by settlers, moved by governments, and eventually lost their children to adoption in the 1950s and 1960s. Of the 15 families in Campbell's village, only two had kept their children.

http://www.ammsa.com/publications/ontario-birchbark/road-allowance-peoples-history-shared-toronto

MY POSITIVE FAMILY TEACHINGS

Our family enjoyed fishing and we made many trips by car during the summer to the lakes in north eastern Alberta. En route, we passed signs saying "Indian Reserve". I learned a bit about Indians from my parents, mainly that their life experience was different than mine. When I reflect on my early years, I feel fortunate that I did not hear many racist, prejudiced or ill-informed comments about Native people; none from my family and only a few negative comments from people I knew in town.

CAUCASIAN GUARDS AND NATIVE INMATES... A POWERFUL IMAGE

My eyes were abruptly opened when I toured the original Fort Saskatchewan provincial goal in 1965 as part of a criminology class at the University of Alberta. I'll never forget the powerful image: Caucasian guards and Native inmates. That got me thinking: why are all the staff White and most of the inmates Native? What could explain this? I don't recall gaining any deep insights, but the questions became engrained in my mind, and I wondered about this issue from time to time as I completed my degree.

OVER-REPRESENTATION OF ABORIGINAL PEOPLE IN THE CANADIAN CRIMINAL JUSTICE SYSTEM

The next step in my journey came as a result of being hired by Alberta Corrections as a Probation Officer in Edmonton. It didn't take long to actually see what is now called "the over-representation of Aboriginal people in the justice system" – lots of Native people being arrested, appearing in court, and serving time in jail. I supervised quite a few Native people on probation. Part of my work took me to Indian reserves west of the city and I started to notice what I considered to be squalid living conditions, poor levels of public service, the lack of community development, shoddy infrastructure, and some cultural values very different to what I was used to.

NATIVE INITIATIVES... DIFFERENT PERSPECTIVES - COMMON GOALS

At this time, too, I was fortunate to meet a director at the Edmonton Native Friendship Centre, Chester Cunningham, who worked at the Courthouse where I worked. His job involved making sure that Native people appearing in court understood the court processes. He spent a lot of time with judges, prosecutors, lawyers, court staff, staff from other agencies and with me, explaining some of the realities of being Native, and how these factors were evidenced in the courtroom. An example here was the tendency for some Aboriginal people to plead guilty to whatever they were charged with just to get out of a very foreign and frightening situation – the courtroom. For the most part, this was new information for those of us who worked around the courts. Chester later founded Native Counselling Services of Alberta (NCSA) and has been awarded honorary degrees, the Alberta Order of Excellence, the Order of Canada and many other awards for his outstanding work in Alberta, across Canada and internationally as well.

CULTURAL ACCEPTANCE...

I also met three new Native probation officers: Danny Sinclair, Lloyd Auger and Gilbert Anderson. Initially, I heard that they were hired by Alberta Corrections as "labourers" as they did not have the "formal qualifications" to be probation officers. Although they were not university graduates or trained as counselors, pastors or police, they had a wonderful "people skills", including a terrific sense of humour, empathy with co-

workers and clients, extensive knowledge and experience in the Aboriginal community and a dedication to helping the probation service meet the needs of all clients, regardless of race, gender or age. They soon proved their worth. These men worked for many years as Probation Officers, in addition to volunteering in leadership positions with Native agencies and being role models in the Native community. Danny, Lloyd and Gilbert gave me a new awareness of Native issues and Native culture, such as the impact of the reserve system, the dynamics of extended family, some differences between Indians and Métis and cultural traits of communication such as the practice of avoiding eye contact. This information proved very helpful in my work as a probation officer.

DIFFERENT CULTURAL TRAITS CAN CAUSE MISUNDERSTANDING WITH FAR-REACHING, SERIOUS CONSEQUENCES

One time I became very frustrated, even angry, with a young man from a reserve west of Edmonton who would not look at me when I was asking questions of him in my office to gather information for a pre-sentence report. After he left my office, Gilbert tapped on my door and asked if he could come in. He said he noted the frustration in my voice during the interview, and then, after asking if he could make a few comments, proceeded to explain that some Native people have learned it is disrespectful to make eye contact with authority figures. I explained to Gilbert that this was sure different than I had learned when my parents would demand: *"Look at me when I'm talking to you!"* Gilbert smiled and said: *"Now, you are learning – there are different ways to do things; different beliefs, different values."* He then gently asked: *"Did it help to get mad?"* *"No"*, I replied. *"Now I realize it is no big deal if some people don't look me right in the eye"*.

About this time, I bought the two books that had such a profound impact on me: *Halfbreed* by Maria Campbell and *Reservations are for Indians* by Heather Robertson. These books were full of personal stories and a tremendous amount of information about the Native reality. Most of the information was new to me but it fit into what little I already knew in a powerful way...and I was changed! I was beginning to more deeply realize that within a framework of the criminal justice system, cultural traits, such as this tendency to avoid eye contact, and social conditions such as poverty, can have an impact on criminal justice and corrections.

DIFFERENT STROKES FOR DIFFERENT FOLKS

I moved to Lac La Biche, Alberta, to head up the Probation office in that community which is north-east of Edmonton. One colleague asked me *why I would go there to work – didn't I know it was the ass-hole of the province;* another commented: *"And all the Indians there, you know?"* I thoroughly enjoyed my time in Lac La Biche, especially the long drives to various communities and courtrooms in the region with Harry Pruden, the local Native Courtworker. From this quiet and gentle man, I learned about important issues such racial tensions, Native politics, community resources and Indian medicine. In discussing with Harry the issue of some Native offenders on probation not reporting to the POs, he wondered why would we breach them; couldn't we go with him into the settlements and reserves in the region to meet the families and community resources and find out what the client was up to? That's what we did and we rarely had to consider a breach.

THE VALUE OF COURTWORKERS

I left Alberta Corrections to work on a Master's degree at the University of Alberta and I accepted summer employment as a Parole Officer in Edmonton. From time to time, I had coffee with Chester and on one occasion, I gave him a copy of a paper I had written for a Sociology of Law course about the impact of Native courtworkers. He said it was the first time he had seen anything written about courtworkers and he asked me to prepare a position paper that would be presented at the 1973 criminal justice conference in Regina. Concern was developing in the justice system about the over-representation of Aboriginal people and he wanted to be there to address this issue from an Aboriginal perspective.

I eagerly accepted the offer to work on the position paper – what a challenge, what an opportunity! (The $100 honorarium

was "big money" for me at that time and was a helpful motivator as well). I gathered my university skills, such as reading, questioning, challenging and immediate answers/ responses, and formulated three questions to be the basis of the position paper. I attended a meeting of the NCSA Board of Directors and, with pen and paper at the ready, asked the Board members for their thoughts on the three questions. I waited in anticipation for the expected rapid response, as I was accustomed to at the university. No response. I became nervous ...what was happening? I waited. Still no response. Eventually, almost panicking, I turned to Chester and quietly asked: *"What's wrong?" "Nothing"*, he said. He paused, then replied: *"You asked some good questions and now they are thinking of good answers."* I relaxed! Once the responses came, they were wise and thoughtful insights into the issue of Aboriginal over-representation in the justice system. I had been part of an Aboriginal experience, where periods of silence are not uncommon, especially when important matters are being considered.

Once my course work at the university was finished, I started work again with Alberta Corrections as a caseworker in a minimum security prison in Edmonton. One Native inmate on my caseload applied for a weekend pass. Initially, the decision-making committee refused him the weekend pass because of concerns that he would drink while on the temporary absence. I called Chester Cunningham and asked if one of the NCSA courtworkers could check in with the guy over the weekend to encourage and support him, and to make sure he was following the terms of his temporary release. This satisfied the committee and the inmate was released. The weekend pass was successfully completed and on the following Monday, I phoned Chester to thank him and the courtworker for their assistance.

NATIVE COUNSELLING SERVIES OF ALBERTA (NCSA)

It was during this conversation that Chester asked if I would be interested in working with NCSA, doing staff training. After several more phone calls to flesh out employment details, I handed in my resignation to Alberta Corrections, then excitedly (and nervously) headed off to work at NCSA, one of two "white guys" in that Native organization at the time.

Native Counselling Services of Alberta was established in 1970 with the objective of providing Courtworker assistance to Aboriginal people in conflict with the law. Agency leaders recognized that Aboriginal people often feel alienated by legal and court procedures, and require special support in navigating the judicial system. In response to these unique needs of Aboriginal people, NCSA established its flagship Courtworker Program, starting with a single courtworker working out of a single office (http://www.ncsa.ca/online/).

INDIVIDUAL RACISM AND FEAR OFTEN GO HAND IN HAND

For me, the next eight years were fascinating. One of the first training sessions I organized was called Public Speaking and we contracted a local Toastmaster to lead the session. I remember one of my speeches was entitled "White man in Indian Country" in which I spoke about the support and encouragement I had received in my first few months at NCSA. I felt I was fitting in, being accepted and beginning to meet the training needs of the staff. The following week, an experienced staff member resigned. When I asked why, she looked right at me and replied: *"Too many Whites."* This was said in a straight forward manner, blunt and matter-of-fact. I was stunned. A day later, my supervisor commented that maybe this was all for the best, for everyone in the organization.

CULTURAL ACCEPTANCE... A DOUBLE-EDGED SWORD

A few months later, as I bounded up the stairs beside the reception area toward my office on the second floor, a voice from a seated Native client sent chills up my spine: *"What's that f— White guy doing here?"* I felt hate and contempt in his voice. I was accustomed to hearing negative comments and criticisms from disgruntled clients in my previous work as a probation officer, parole officer and prison caseworker but this comment was different – I was badly shaken and I was scared! Fortunately, one of my colleagues commented right away to the client: *"He works for us – he's OK"*. That seemed to put an end to the matter and I heaved a sigh of relief.

I traveled all over Alberta conducting training sessions, attending staff meetings, visiting the families of co-workers, and meeting justice officials. My family often hosted BBQ's at our home on the last evening of training sessions held in Edmonton, in the hopes of matching the friendliness and hospitality that staff members and their families extended me when I was on the road.

SIMILARITIES AND DIFFERENCES WITHIN ABORIGINAL CULTURE

My understanding of the Native experience continued to deepen, thanks to the NCSA staff and staff from other Native

organizations that I worked with on training matters. Now, the similarities and differences among the Native tribes, languages, histories and cultures became clearer. I started hearing about residential schools, systemic discrimination, Native rights, Native self-determination, self-government, Native protest, Native Pride, the Red Road, the 60's Scoop and the American Indian Movement. I continued to learn about important similarities and differences within the Aboriginal culture itself.

PAST CRIMINALIZATION OF CERTAIN SACRED CULTURAL CEREMONIES

I began hearing about ceremonies such as smudging, the sweat lodge, the Sun Dance and pipe ceremonies. An elderly male courtworker from Calgary mentioned one day after a training session that he had been imprisoned for taking part in sweat lodge ceremony. This really brought home the reality that some Native ceremonies had been prohibited, not just discouraged, but outright criminalized.

I found some of what I was learning to be intriguing; some was inspiring; some was frustrating; and other things made me mad.

FEDERAL REVIEW PROCESS FOR NATIVE COURT WORKER PROGRAM ACROSS CANADA

While at NCSA, I was assigned to represent the organization at a series of meetings hosted by the federal Department of Justice to develop a review process for Native courtworker program across Canada. Justice cost-shared the funding of the courtwork program with provincial governments, and various Native organizations were contracted as the carrier agencies to supply the actual courtworker services. These meetings took a central group of courtworker agency representatives, such as myself, all across Canada with the goal of advising and informing Justice officials about what courtworkers do, the impact of courtworker services, why the service was needed, the challenges facing the courtworker agencies and what changes were needed make the courtworker services even more effective in the Native communities and the court system. This review, however, was seen by some Native organizations as a way to limit or shut down their courtworker programs.

At various meetings, federal Justice officials reassured courtworker representatives that the review was not going to be a vehicle to slash funding but many courtworker agencies remained skeptical. They said that they had seen too many program evaluations pave the way to significantly reduce or cancel a variety of programs for Native people. The tensions in many of these meetings were obvious and I was learning firsthand about government-Native relations. I made sure my role stayed focused on service delivery issues (need, services and intended outcomes) and to leave the politics to the Native leaders. I had learned this working with NCSA. While I can be eloquent and persuasive, the Native people I worked with at NCSA were very capable of expressing the views, perceptions and aspirations of their communities. I was very comfortable playing a support role, such as helping out with staff training, taking part in review processes for several programs and the like. There was no need for me to think I should speak for Native people and I was careful not to place myself in a position where others saw me as speaking for the Native community.

A TREACHEROUS DIVIDE BETEWEEN NATIVE AND NON-NATIVE ORGANIZATIONS

At one courtworker review meeting in Toronto in 1980, attended by the agency representatives and Ontario Native political leaders, we met to prepare for the meeting the next day with federal Justice officials. In a small, crowded room with about 20 persons, one Native political leader walked into the room, looked around, fixed his gaze on me and demanded: *"What's that White guy doing here?"* This time, I wasn't alarmed by such a comment but I felt the tension in the room spike instantly. One of my colleagues on the committee, a courtworker from Ontario, immediately responded: *"He knows his place; he is here to give us a hand; don't worry about him – he's OK!"* The Native leader nodded, the tension dropped and we got down to business in preparation for the meeting with federal officials the next day.

I KNEW MY PLACE!

This was a good lesson for me – knowing my place. Despite the credibility I developed through the work I did with the NCSA and the courtworker program across Canada, some people still held me in suspicion, at least initially. I came to understand that it would take a long time for me, a white guy in Indian county, to be accepted as someone with something positive to offer. I also came to believe that it would take a lot of good work and a long time to bridge the divide between the Native and non-Native organizations and communities. I am comfortable with the small part I played in changing the skills, knowledge and attitudes of the terrific people I worked with at NCSA and elsewhere. I watched the staff become

more knowledgeable about law, legal processes, courts, prisons, interpersonal dynamics, their job descriptions and the jobs of a wide range of justice officials with whom they worked. They became more skillful and adept at performing their jobs and they became more confident in themselves, both as employees and as people. Not surprisingly, justice officials noticed the positive changes and the impact that staff were having on the court and prison systems, including staff and clients.

I worked with a number of non-Native people who were contracted to lead specific training sessions. Two such people who had a tremendous impact on our staff were Brenda Robinson, who taught report writing sessions, and Geneva Ensign, who led personal awareness sessions. Initially, they were contracted from Grant MacEwan Community College, then later through their own businesses. They helped the staff develop skills and knowledge in their respective areas of expertise; but, in my view, the biggest difference they made was in the confidence the staff felt about themselves, their work, their families and their communities. Brenda and Geneva mentored many NCSA staff, especially the women, long after the training sessions ended.

HAVE CANADIANS BEEN QUIET RACISTS?

My knowledge of and appreciation for the Aboriginal experience continued to develop through my job at NCSA. One particular understanding came from an Inuit man working with us in Edmonton. He said:

> *"I have found Canadians to be quiet racists. They generally are not like Americans who tend to be in-your-face racists. Canadians are more subtle in their racism but the impact is just as powerful and it is tough to deal with quiet racists, maybe tougher."*

CULTURAL INFLUENCES CAN BE LEARNED

I left NCSA for health reasons and a year later started working as an Instructor with the Correctional Services program at Grant MacEwan Community College (now MacEwan University) in Edmonton. I enjoyed dealing with the students, faculty and community agencies as well as teaching a variety of courses but the course I loved the most was entitled "Cultural Influences". Here, students learned how cultural traits influenced criminal justice and corrections. Initially, the course focused on Native culture but over the years expanded into other cultures and faiths as well such as Sikhs, Vietnamese and Black, and then into the theme of Diversity .

KNOWLEDGE WAYLAYS PRECONCEPTIONS AND MISCONCEPTIONS THAT CAN LEAD TO RACIAL TENSIONS

The course content about Aboriginal history, values and beliefs brought out a wide range of reactions from students. I always co-taught the course with Aboriginal resource persons. For many years, I partnered with the late Diane Jeffery, director of a young offender group home with NCSA. Diane was gentle and quiet in her teaching style. Many times, she had a class of 50 students totally enthralled in what she was explaining or demonstrating. For example, when we dealt with smudging and sweet grass, I would introduce the topic by relating some of the misconceptions I had heard in my career about sweet grass:

- the Natives use it to get high
- they use it to cover the smell of "pot"
- anyone near it gets high, even from second hand exposure

SWEET GRASS & SMUDGING... A PURIFICATION AND CLEANSING RITUAL

Diane then took over. She handed around a braid of sweet grass, explained how it was picked, how it was prepared and lit, the symbolism of the braids and that it was used for the purpose of purification and cleansing. She gently invited everyone to stand and form a circle. She explained that if someone did not want to participate, they could say "Pass" or step back. She asked women on their "moon time" to pass, then explained why this is done. She demonstrated a smudge by waiving the smoke over her eyes, ears, mouth, heart and body, saying:

> *"We do this so we will see good things in people, hear good things about others, say good things about people and have good feelings for ourselves and others. If our body hurts somewhere, waive the smoke over that part and quietly asked Creator to make it better".*

Initially, there would be some snickers, nervous glances around the room and a shuffling of anxious feet. As the ceremony progressed, a calmness settled over the students; they became very quiet, settled and attentive; many seemed to reverently await their turn to smudge.

SWEET GRASS IS NOT A DRUG!

When we debriefed following the ceremony, I would ask; *"Did anyone get high?"* Heads shook *"No"*. Diane would then ask: *"Can you tell me what you feel?"* Students would quietly offer that they felt peaceful, relaxed, calm, and gentle. A few commented that the experience was no big deal but it was OK to try it. Some students then asked to start each class with a smudging ceremony while others asked Diane if they could use sweet grass on their own.

LEARNING FROM AND ABOUT THE ABORIGINAL EXPERIENCE

I believe these were powerful testimonials that went a long way to reduce the wrong information that some people had about this Aboriginal experience, to help the class see how culture influences policy and procedure in criminal justice (such as the use of sweet grass in a prison) and, maybe more importantly, that there is a lot to gain from the Aboriginal experience.

DECONSTRUCTING STUDENT PRECONCEPTIONS

In the classes, two frequent statements, sometimes said with considerable anger, often came up: "The Aboriginals don't pay taxes" and "They get their education free". Patiently, we would explore these statements, ensuring the class received complete and accurate information on the issues. Most students were satisfied with and appreciative of the explanations; they could now go forward with good information. We explored many other issues where people had wrong or incomplete information about the Aboriginal experience. Nearly always, students developed an understanding at a deeper and much more positive level than they had previously. Incidentally, I use the same approach with neighbors, friends and others when improper statements or questions are raised about the Aboriginal experience and, not surprisingly, the results are the same.

THE PE SAKASTEW HEALING CENTRE... WHAT IS A SWEAT?

In order to increase the intensity of the experience of learning how Aboriginal culture influences the delivery of correctional services, we take the class to Hobbema, AB to spend a day at the Pe Sakastew Healing Centre. This minimum security facility is run by the Correctional Service of Canada with major input from the local First Nations community. Each year since it opened in 1997, students had an extensive tour of the facility and met with staff and residents. Some students had the opportunity to attend a sweat on site with the Centre elder. The first time this was offered, two students attended the sweat along with Diane and I. In later years, up to twenty students participated; twelve students participated with me in April, 2013.

A SWEAT IS A CEREMONY AND A LIFE -CHANGING EXPERIENCE FOR SOME

There were always a variety of reactions after the sweat. A few would comment: *"Is that all there is to it?"* Others would comment: *"Well, that was interesting. At least I know what is involved. I can see where this might be helpful to some Aboriginal offenders"*. This was the most frequent kind of comment. A few would quietly say: *"Wow, that was awesome! What an experience. Now I can see why this is important; now I will promote it"*. We always asked the class to write a personal thank you note to the Elder, if they wished. Several times I noted a comment such as: *"Thank you, sir; for me, the sweat was a life-changing experience!"*

As we covered various topics in class, some students were quick to loudly point out: *"I already know this stuff – I learned it in elementary school"*! Interestingly, others would say: *"Gee, I never knew that before. I wonder why we didn't learn this in junior or senior high school?"* A few students quickly dismissed what we were teaching: *"You mean we have to know this stuff – will it be on the exam?"* These same students also seemed to relish the opportunity to challenge, almost attack, Aboriginal guest speakers that we brought into class with comments such as: *"What education do you have?" "Are you serious?"* and *"That's not the way things are!"*

Most students, however, were respectful of what they were learning and the Aboriginal resource persons they met. Course evaluations revealed similar conclusions: some said the course was OK; some said it was a good course and some said it was excellent. Diane reported meeting quite a few students during field placement or in the community, and some said to her: *"The Cultural Influences course was the best of all the courses in the program"*.

ABORIGINAL PERSPECTIVES AND TEACHINGS ARE USEFUL AND HELPFUL

In teaching the course, I was reminded of the existence of racism, prejudice and a lack of awareness about the Aboriginal experience. I was also encouraged, however, by the enthusiasm that most students had for learning the Aboriginal experience – these folks could readily see how this awareness would help them in their career, and quite a few spoke of how some of the Aboriginal teachings were helpful in their personal lives.

A HARSH REALITY: THE HISTORICAL TREATMENT OF ABORIGINAL PEOPLE IN CANADA

I continued to read what I could about Aboriginal people. I attended conferences and listened to Aboriginal speakers. I came to hear more about concepts such as genocide, colonialism, assimilation, eradication, oppression, systemic discrimination, individual racism, collective racism and dislocation. The reality of the intergenerational effects of experiences like residential school, colonization and discrimination became clearer to me. I heard the phrase "survivor" quite often, in reference to Aboriginal people as survivors of their experiences at the hands of non-Aboriginal people. Over time, I started hearing about concepts traditional lands, consultation, Aboriginal title and "It's our responsibility". I recall hearing the Seventh Fire prophesy. Interestingly, what used to be a rarely-heard phrase, "Mother Earth", is now rather main stream. So, too, is the word "healing".

HEALING JOURNEYS: A PATH TO REHABILITATION

The term "healing" is popular today. I first heard this word used in criminal justice in the 1990s from Indigenous offenders. My company, KAS Corporation Ltd., was fortunate to be contracted to coordinate two research projects sponsored by the Nechi Training, Research and Health Promotions Institute at St. Albert, near Edmonton. Nechi was established in 1974 to meet the growing need for addictions prevention and recovery resources for Aboriginal people. Through culturally sensitive training, research and health promotions initiatives, Nechi provides counselors, health care workers, social workers, educators, community service agencies, government agencies and other members of the helping professions with the tools and resources to help heal the pain and devastation caused by addictions and abuse. (http://www.nechi.com/)

These research projects examined the lifestyles of Aboriginal offenders who had extensive criminal records or had committed very serious crimes, then had turned their lives around to become respected, law-biding citizens. Maggie Hodgson, then CEO of Nechi, recognized the power of the life stories of this group of offenders and she spearheaded these research projects and a related video.

For her work at Nechi and elsewhere in Canada and abroad, Maggie has been awarded the Order of Canada, along with a host of honorary degrees and other significant awards. She knew others would be impressed by these ex-offenders in that they had turned their lives around to now be seen as role models in their communities. These men and women attributed the remarkable changes in their lives to a number of factors, such as family support, becoming clean/sober, and learning about Aboriginal spirituality. Many spoke about their "healing journey" and did not use the term "rehabilitation". One of the researchers who interviewed dozens of the respondents concluded:

> *"We forget to forgive, support, enhance, and love our brothers and sisters back to health and wellness. We forget about creating harmony and balance. It is better to pick someone up when they have fallen than to kick them when they are down."*

WHERE DOES THIS LEAVE ME TODAY?

In my career in justice/corrections, I've met some angry people. They lash out at anything Aboriginal, they seem to reject factual information related to Aboriginal experience and they see explanations as excuses. Do I want to be like that? Definitely not! Are they afraid? I believe they are – afraid of something they don't know or don't want to understand.

I want to be like others I have met, particularly Aboriginal people, who are optimistic about the future. They are at the forefront of changing things for the better for Indigenous people and, indeed, for all Canadians. I recall viewing a video about the Stan Daniels Healing Centre, a minimum security facility in Edmonton run by NCSA with support from the Correctional Service of Canada. In the video, two scenes stand out for me. In one, there is an image of a hand with the palm facing upwards. In the other, a hand is positioned as in a hand shake. My paraphrase of the audio is: "In the past, we approached Canadians with our hands held out; now, we approach Canadians in partnership."

PARTNERSHIP! A POWERFUL WORD

To me, the word "partnership" seems to be the right framework for discussions and actions related to the Indigenous communities. It means we must learn about the Indigenous experience, with all the joys and sorrows that go with it. It offers insight and direction into how to deal with the over-representation of Aboriginal people in the justice system. A friend working in the justice system recently said to me:

> *"We have a window of opportunity to help bring about change that benefits Indigenous offenders and their communities. This will benefit all Canadians.*

We can embrace the idea that people really do have different needs, see what contributes to these different needs and we can go forward with optimism and partnership to meet those needs"

WHERE DOES THE NON-ABORIGINAL CRIMINAL JUSTICE WORKER FIT IN?

All this seems to me to be easy to understand, to grasp the direction in which we in criminal justice/corrections should be taking, and to understand what role we can play to make it happen.

For those who react with anger or frustration at what they hear about the Indigenous experience, aren't they just getting in the way? Aren't they making life as a Canadian and as a justice worker difficult for themselves and for their colleagues, family and friends? How can they be expected to maturely deal with issues raised in Gladue (1999, Supreme Court of Canada), the recent Idle No More demonstrations, blockades, protests and all the Indigenous issues that keep coming to the forefront? I wonder how the "nay-sayers" deal with the incredible success evidenced by Indigenous people in Canada in medicine, law, politics, business, education, tourism, art, writing, architecture, television, sports and public services? Have they not seen the Aboriginal Achievement Awards?

TESTIMONIALS

So much for my thoughts... here are some recent comments from some colleagues with whom I have had the privilege to work:

MICHELLE ANDREWS

(former chair of the Correctional Services and Mental Health programs at Grant MacEwan College, now MacEwan University in Edmonton):

I continue to be humbled by how little I knew about the experience of Aboriginal people in Canada before I started my academic career at MacEwan. Not ashamed, not saddened, not angry...just humbled. Why? Because humility has allowed me to be open to all the teachings that have been offered to me, directly and indirectly from the Aboriginal colleagues I have worked with, and from students. For example, when students ask questions about residential schools - and they ask many - I've come to realize that their questions are genuine and that they almost always come from a place of appreciative inquiry. I'm humbled that I am the person that provides at least a partial answer and then encourages them to seek out clearer, more comprehensive answers in many places...from elders, from fellow students, from the literature, from colleagues in the workplace. What a privilege to be part of the learning journey.

CHESTER CUNNINGHAM

(founder of Native Counselling Services of Alberta):

I think we sometimes put too much emphasis on culture. Culture does not solve problems, just as it does not create problems. Considering the influence of culture, though, can help with solutions. What is more important is the individual and the influence of family. Culture does not make decisions for me – I make the decisions. Can I look in the mirror and like what I see? I see me, not a culture. What can I adopt from culture that will help me make good decisions and influence good policy? I think culture sometimes gets confused with selfishness.

By the way, I was recently asked to sit on a selection committee to advise on hiring for an important position in criminal justice. A senior-ranking politician walked into the room. The first thing they said was: "I'm not selecting an Indian!" Others on the committee squirmed but said nothing. I responded: "I don't care if the person is green, pink, blue or a member of your political party. I want the person to be the best person for the job!"

Do we still have to deal with decisions based on racism?

Do we still have to deal with decisions based on racism?

MAGGIE HODGSON

(founder and former Executive Director of the Nechi Institute; former Board member of the Truth and Reconciliation Commission of Canada)

"I have been involved with justice and Indigenous issues for over 4 decades. In 1973, a small group of us wanted to make a presentation at a national criminal justice conference at a hotel in Regina. We were not allowed to attend the conference – it was for government officials only. We were not allowed to leave a position paper about Aboriginal engagement in justice and corrections at the information table – that table was for official government documents only. We were not even allowed to go into the conference room to distribute our paper.

So, we stood outside the conference room in the hallway and handed out copies of our paper to people as they left the conference. What we proposed then is, for the

most part, mainstream in justice and corrections today.

We have come a long way since then! By "we", I mean the Indigenous communities, criminal justice professionals and government officials.

What if we had decided not to go to that conference? What if we hadn't prepared a position paper? What if we decided not to give out the paper in the hallway? What if the people we gave them to had not had the good sense to read them?

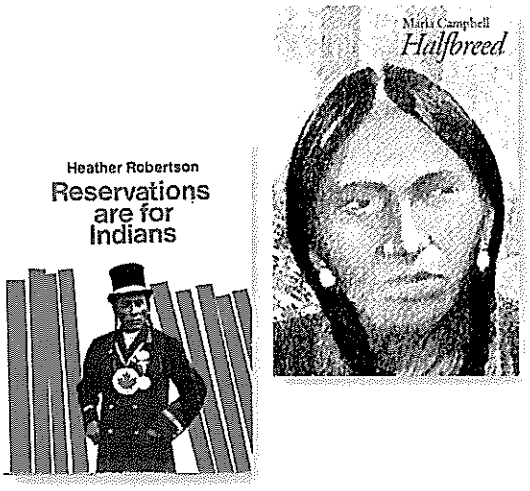
I have worked with various agencies and with many officials. Some have come and gone. I stay an Indian and I don't go away. ***The Indigenous people today continue to have a vision of their place in this country and of how things can be better for all Canadians. Many of the programs operating today are part of that 1973 vision paper. Through culture and ceremony, Aboriginal people continue to create new beginnings within the system.*** *We have come light years over the last forty years. We work towards our shared vision.*

Despite the existing government we work towards our shared vision. It is rooted in ceremony. We have been told and we follow the direction the grandfathers have given us. Through the hills and valleys we move on, one step at a time. Our spirit is not in the dark anymore. Our eyes are wide open on the road set out for us through visions of what is possible. Will that take another 40+ years to happen? What those people who stand in our way do not know is that, while they think it is in their hands, really it is not. It is in the spirit of those who continue to follow the ceremony and the directions given therein."

CONCLUSION

Through my journey, I have come to understand the mindset behind the first of the two comments quoted at the start of this article. I have become a firm believer in the second comment, for it truly is fundamentally moral and practical for all Canadians, especially those working in criminal justice, to have a good understanding of the Native/Aboriginal/ Indigenous experience.

Mitakuye Oyasin ••



L'information sur les enjeux autochtones et le système de justice pénale canadien, contenue dans cet article, est le fruit des expériences personnelles et professionnelles de Doug Heckbert, un auteur, un criminologue et un enseignant, fortement influencé par deux livres : Halfbreed de Maria Campbell et Reservations are for Indians de Heather Robertson. À des degrés divers, des idées préconçues relatives à « l'infériorité » perçue des Autochtones sont entrées dans la façon de penser des Canadiens, sont devenues enchâssées dans leur culture et ont donné lieu, notamment, à des échecs dans le développement du système des pensionnats, un système fondé sur l'intolérance de la différence. Bien qu'elle ne se manifeste peut-être plus aux niveaux culturel ou collectif au Canada, l'intolérance raciale envers les Autochtones canadiens persiste dans l'esprit de certaines personnes et donne lieu à des tensions et de la discrimination raciales. Heckbert en vient à la conclusion que les peuples autochtones ont fait de grands pas pour surmonter les fausses conceptions et les stéréotypes en se faisant entendre, mais la surreprésentation des peuples autochtones dans le système de justice canadien constitue un rappel prudent que l'intolérance culturelle et les tensions raciales pourraient constituer au niveau individuel un facteur contribuant à l'expérience autochtone actuelle.

SAWBONNA, RAVEN SPEAKS, AND THE EYE IN YOUR HEART

BY MARGOT VAN SLUYTMAN, BA, MA

YOU GOT TO LOOK AT THINGS WITH THE EYE IN YOUR HEART, NOT THE EYE IN YOUR HEAD.
Lame Deer (Crow Dog 199)

MY JOURNEY FROM MURDER TO MEANING

In April of 2008, I finished writing my book, *Sawbonna: I See You*, a story of justice as lived experience, in which I speak not only of the fact that Ravens accompanied Glen Flett, the man who murdered my Dad, Theodore, and I on our very first meeting. I write about how Glen taught me the word, Sawbonna, explaining that it means to see and be seen, to hear and to be heard (Van Sluytman 148). From our time of meeting at Westminster Abbey, July 2007, I have shared talks and workshops with both victims and inmates, and those who teach and work with them.

SAWBONNA... A KINDRED SIBLING OF RESTORATIVE JUSTICE

Like Sawbonna, "justice and dispute resolution in traditional Aboriginal societies can be illustrated by a restorative model of justice (underscoring that) justice is right relationship and harmony" (Reilly 225). A restorative model of justice recognizes that harms are done to people by people who are each part of society, part of community. Addressing how this affects all of us as a society and not just those involved in the crime, is important. How I came to conceive and write *Sawbonna: I See You* is intimately involved with restorative justice and the Aboriginal experience.

THE ABORIGINAL EXPERIENCE... SWEAT CEREMONIES

In the Summer of 2000, I was invited to a sweat lodge in Northern Ontario. It was an intense and powerful experience that turned out, seven years later, to have "foreshadowed" the writing of Sawbonna. During the sweat ceremony, I sat with the grand-mothers and the grand-fathers and, as water was poured over them, felt the mist and heat envelope me in a raw-scared act of hearts beating, of souls singing, of tears falling, of sweat dripping. *Of letting in. Of letting go.*

ABORIGINAL NAMING CEREMONIES

After this rich encounter, I was invited to receive a Spirit Name, an offer of a gift I initially rejected because I was fearful that I would then have to become a member of a "club" wherein I would be expected to be a certain way and do certain things. Already aware of what cultural "norms" and expectations of my gender, my cultural connecting, my "faith," was "supposed" to look like, I did not want to add another set of expectations to my overflowing intellectual, psychic, and spiritual sack. I was also afraid that some Natives and non-Natives would accuse me of trying to be what I was not. Of *posturing and pretending.* My dialogue with the individual who would name me eased my concern.

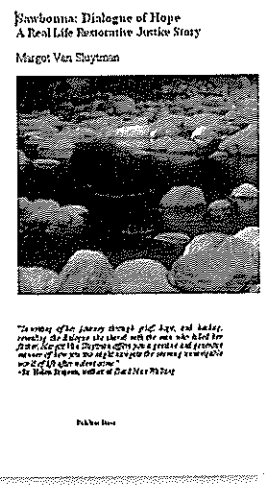
MARGOT/RAVEN SPEAKS

The friend who had invited to that sweat lodge had told me he had a sense of what name it might be. He felt sure that it would have to do with Raven. The name with which I was gifted was Raven Speaks. I sobbed when I received it because it felt so right. As a word-lover and as a talker, often accused of saying too much, of asking too many questions, my heart and soul found resonance and affirmation. I became Margot/RavenSpeaks.

CONNECTIONS

I have met many Native and non-Native people who have taught me about how much we have in common in terms of dealing with loss: that which we have experienced and that which we have caused. I came to learn that the searing grief with which I had lived from March 27, 1978, to that moment, July 14, 2007, when I came face to face and heart to heart with the man who murdered my Dad, Theodore Van Sluytman, was as a kind, potent, and vital teacher. And I wanted to learn.

One of the most powerful lessons that I learned was how my lived experience of Sawbonna is connected to the journey that Natives and non-Natives are engaged in with colonization, decolonization, intergenerational trauma, and lateral violence. The essence of the connection is that victims and offenders, with an oft-time



blurred line, yearn to participate in processes of healing that include naming the hurts, acknowledging the facts of brutality, and engaging in dialogue, when the time speaks its rightness for each individual, for how and what healing can mean.

CRIME IS NOT ABOUT WHAT HAPPENED "OUT THERE"

Crime is not about what happened "out there," and is not about those in power deciding what needs to be done, separating the good guy (victim) and the bad guy (offender). Of course, accountability is a must; yet, a significant question that is asked by Sawbonna is: how? The second being, why? If accountability takes into consideration that crimes are committed by people against people then what becomes another necessary question is: How does incarceration prove effective for victim, offender, and society?

SAWBONNA, LIKE RESTORATIVE JUSTICE IS NOT ABOUT FORGIVENESS...

Since Sawbonna, like restorative justice is not about forgiveness, face-to-face meetings, and mediation, its respect for right relationship means that no matter where a person is, and no matter the crime, it is not only possible, but necessary to see and be seen, to hear and be heard. When this occurs the three core values of living justice: respect, relationship, and responsibility can be lived no matter where a person is, and the definitions used to tell a person who she is, can be challenged. The personal becomes very much intertwined with the public, challenging specious notions about who "they" say who you are and how you should be.

ECHOES OF NATIVE PRACTICES

Another resolution practice that Sawbonna honours, and that echoes Native communities and their relationship to living justice, is the importance of connecting with our ancestors, which makes us acknowledge our inter-relatedness. According to Renee Shilling, "There is tremendous unresolved grief in Indigenous communities," (Schilling 153); and she quotes Duran and Duran that," Some medicine people have equated the treatment process as one which we not only treat the client but are also treating our ancestors... If we do not work out a resolution for our ancestors, we are then only ensuring that our children will be left to continuing struggling with the problem" (Duran, Duran 154).

HEALING

When Glen Flett and I participated in our ritual of healing with Native Elder, Stalking Wolf, creating the crucible for this powerful process, we were asked to invite our ancestors to that place with us. That place beneath a giant maple tree, whose leaves carpeted the earth, and whose glorious roots spoke an ancient knowing of nurture and strength. Glen and I spoke to our ancestors, letting them know why we chose to be there standing with each other, letting our hurt and sorrow and anguish find voice.

REACHING BACK AND FORWARD THROUGH TIME

We then spoke with our kin, still living, for whom we would one day be ancestors, to let them know why we were choosing to engage in this ritual. Stalking Wolf invited us to reach back, to be in the present, to reach forward. The immensity of the emotions that flowed in our tears and our want for renewal, for resilience, for recognition, spoke Sawbonna's voice. And that voice has continued to accompany me as I share time and story with those who know loss, who know abuse, who know intergenerational trauma and the at times almost unbearable pain that stings and stirs and maddens.

ABORIGINAL RELATIONS ARE FUNDAMENTALLY PERSONAL

"Aboriginal relations are fundamentally personal" (MacDonald 88), as is Sawbonna; and what could be more personal and powerful than sharing our stories? Sawbonna, justice as lived experience is about sharing our stories: face-to-face, heart-to-heart, in safety within community contexts. This sharing invites a way of being heard, of being seen, a way to come to acknowledge savage atrocities, and a way to speak about stereotypes, and collective pain. Sharing story is a way to address and work in the challenging and necessary process of eradicating the us versus them paradigm. This process cannot be rushed or dictated to. Sawbonna lives the value that, "reconciliation must draw upon the diversity and uniqueness that each individual brings to the journey" (MacDonald 95). One of the greatest gifts of meeting and sharing healing with Glen Flett, were the words his daughter, Victoria, said to him after our first meal together at his home, "Dad, she is exactly like you." Victoria was ten years old. She saw with the wisdom and honesty of a child's relationship to the world how much "victim" and the "offender" have in common.

ABORIGINAL RESOLUTION PRACTICE

This is one of the most vital kinships that Sawbonna has with Aboriginal resolution practice. That kinship is that we can see each other from all manner of perspective no matter where we have come from and what we have done and what has been done to us. We are related. Like it or not. We are part of community and culture, and part of the only race there is: the human race, where the eye in our heart yearns to learn how to celebrate the depth and the possibilities that lie in each of us for collaboration, for grappling with the grief, the losses, and the potential transformation, if transcendence, as each individual takes up the challenge to see herself, to see himself, no matter what definitions we have been given or chosen to wear. This is Sawbonna. This is its kinship with Aboriginal healing ways, and so very many other ways of engaging and addressing hope and possibility after profound loss.. ••

RÉSUMÉ FRANÇAIS à la page suivante

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Margot Van Sluyman traite ici de son modèle de justice vivante, Sawbonna, en lien avec certaines pratiques de résolution des conflits dans les communautés autochtones, en l'occurrence les pratiques de guérison à l'intention des victimes et des délinquants, la communication avec les ancêtres, la dénonciation et les cérémonies de sudation. Tout comme dans le cas de la justice réparatrice, la Sawbonna n'a rien à voir avec le pardon, les rencontres en face à face et la médiation; elle est plutôt axée sur le respect de relations justes. Quel que soit le crime, voir et être vu, entendre et être entendu sont des éléments cruciaux de la guérison, parce qu'ils évoquent les trois valeurs fondamentales de la justice vivante: le respect, les relations et la responsabilité. Lorsque les dimensions personnelles et le publiques s'entremêlent, des notions vides de sens relatives à « ce qu'ils disent », à « qui vous êtes » et à « comment vous devriez vous comporter » sont remises en question par l'œil de votre cœur. La criminalité ne doit pas se limiter à des catégorisations, les bons contre les mauvais, et, tout en reconnaissant la nécessité de rendre compte, Comment ?, Pourquoi ? et Comment l'incarcération s'avère-t-elle efficace pour les victimes, les délinquants et la société? sont des questions d'importance vitale.pas pour surmonter les fausses conceptions et les stéréotypes en se faisant entendre, mais la surreprésentation des peuples autochtones dans le système de justice canadien constitue un rappel prudent que l'intolérance culturelle et les tensions raciales pourraient constituer au niveau individuel un facteur contribuant à l'expérience autochtone actuelle.

THE STUDENT SPACE L'ESPACE ÉTUDIANT

WHY DID THE SUPREME COURT HAVE TO DECIDE R V IPEELEE?

BY MARK G. CARTER, recent graduate of the JD/MA in Criminology program at University of Toronto

SUPREME COURT — LANDMARK DECISION in R v Gladue

It has been fourteen years since the Supreme Court of Canada issued its landmark decision in *R v Gladue*. This decision would constitute the first application of a new sentencing approach that signified a possible transformation in the relationship between Aboriginals and the criminal justice system, particularly in regard to Aboriginal overrepresentation in Canadian prisons. Unfortunately, that hope has not been realized; *since Gladue,* the overrepresentation of Aboriginals in Canadian prisons has continued to increase. Overall numbers of Aboriginal and non-Aboriginal prisoners are decreasing, but the decrease among Aboriginal people has been much slower. From 1998/1999 to 2010/2011 the proportion of incarcerated Aboriginal men increased from 13% to 25%. Among females, the increase in representation is even greater, moving from 13% to 41% (Samuel Perreault; Mia Dauvergne). Further, the disproportionate number of incarcerated Aboriginals is consistent across all provinces and territories (Dauvergne).

Supreme Court Decision Required on R v Ipeelee and R v Ladue

On March 3, 2012 the Supreme Court of Canada released its decision on *R v Ipeelee* and its companion case *R v Ladue*. This important judgment reaffirmed the *Gladue* principles and addressed some of the controversial issues that arose out of the jurisprudence and academic commentary following the *Gladue* decision. It is odd that the Supreme Court would reaffirm a decision it made 13 years later without making any changes to a legal test. Our Common Law legal system, of course, operates on the principle of *stare decisis* where lower courts are to respect and follow the judgments of higher courts with the result being that similar cases are decided so as to give similar and predictable outcomes.

Problems in Lower Courts vis-a-vis the Gladue Decision

The fact that *R v Ipeelee* made its way to the Supreme Court indicates that lower courts have had problems applying the *Gladue* decision. The purpose of this article is to discuss why this is the case. It will highlight three controversial issues that have arisen out of the post-*Gladue*

jurisprudence: 1) the irregular and uncertain application of *Gladue* in the context of serious offences, 2) the inconsistent filing of Gladue reports, and 3) whether a causal connection is necessary between the systemic and background factors of the accused on the one hand and the commission of the offence on the other. First, however, the historical context of s. 718.2(e) will be described, as well as a summary of the *Gladue* and *Wells decisions.*

EARLY ATTEMPTS AT REFORM

For over three decades the overrepresentation of Aboriginals in the criminal justice system has provoked various attempts by Parliament to remedy the problem. Initial efforts were limited and involved adding an Aboriginal perspective to the dominant system of justice. This occurred in two principle ways. First, cross-cultural training was delivered for the mostly non-Aboriginal system personnel. They were educated on Aboriginal culture and traditions in the hopes of diminishing racism and discriminatory practices. The second way was through indigenization – that is, adding Aboriginal personnel to the previously non-Aboriginal personnel, thereby 'indigenizing' the 'white' system. The goal was to make the system more understandable and comfortable to Aboriginal people. Both these concepts assume that the justice system has no significant flaws and only minor reforms are necessary for it to treat citizens equally (J. Dickson-Gilmore & C. La Prairie).

Further attempts to alleviate overrepresentation have focused on other areas said to be the cause. Of particular note are the use of prosecutorial discretion and sentencing. Prosecutors are encouraged to use their discretion to divert appropriate offenders out of the system when circumstances permit and where alternative programs are available. This option depends heavily on the existence and quality of such programs and whether they have a reasonable rate of success (J. Dickson-Gilmore & C. La Prairie). In regard to sentencing, the earliest attempts at reform involved Elders' or community advisory panels. These were a way of voicing community interests and providing input into sentencing and the judgments of courts (J. Dickson-Gilmore & C. La Prairie). Unfortunately, none of the foregoing methods made an impact on the rate of Aboriginal overrepresentation.

1996: New Sentencing Provisions for Aboriginal Offenders Introduced in Bill C-41, Especially Section 718.2

The focus of the remedy shifted to the actions of judges in 1996 when Parliament introduced Bill C-41 containing the new sentencing provisions in Part XXIII of the *Criminal Code* (R.S.C. 1985, c C-46.). Most notable among them is section 718.2 by its affirmation that a "court that imposes a sentence shall also take into consideration the following principles... [...] (e) all available sanctions other than imprisonment that are reasonable in the circumstances should be considered for all offenders," *with particular attention to the circumstances of aboriginal offenders.*

New Sentencing Provisions First Interpreted in 1999, in R v Gladue

The first time the Supreme Court of Canada had the opportunity to interpret the new sentencing provisions came in 1999 in the case of *R v Gladue.* The accused, a 19 year-old Aboriginal woman, pleaded guilty to manslaughter for killing her common law husband. On the night of the incident, she was drinking beer with the victim and some family and friends. She suspected the victim was having an affair with her older sister and confronted him with his infidelity. He provoked her by saying she was "fat and ugly and not as good as the others". A few minutes later, the victim fled their home and the accused followed him, carrying a large knife. Evidence showed that while inside their home she had stabbed him in the arm. Outside of their home she stabbed him in the chest, inflicting a mortal wound.

In its landmark judgment of this case, the Supreme Court of Canada expressed its view that the enactment of the new Part XXIII was a "watershed, marking the first codification and significant reform of sentencing principles in the history of Canadian criminal law" (*Gladue*). Thus, s. 718.2(e) is not merely a codification of existing jurisprudence. Rather, its purpose is to ameliorate (to the extent possible through sentencing) the serious problem of overrepresentation of Aboriginal people in prisons, and to encourage sentencing judges to have recourse to a restorative approach to sentencing. The Court recognized that the causes of overrepresentation are complex and

multi-faceted, but affirmed the statutory duty of sentencing judges to consider all reasonable alternatives to imprisonment with particular attention to the circumstances of Aboriginal offenders.

The *Gladue* Methodology

While sentencing remains an individual process, s. 718.2(e) alters the method of analysis which sentencing judges must use in determining a fit sentence for Aboriginal offenders. Judges now have the duty to consider "the unique systemic or background factors which may have played a part in bringing the particular aboriginal offender before the courts". The Court did not claim to provide an exhaustive list of factors but made the following statements:

> *Years of dislocation and economic development have translated, for many aboriginal peoples, into low incomes, high unemployment, lack of opportunities and options, lack or irrelevance of education, substance abuse, loneliness, and community fragmentation.*
>
> *[I]t must be recognized that the circumstances of aboriginal offenders differ from those of the majority because many aboriginal people are victims of systemic and direct discrimination, many suffer the legacy of dislocation, and many are substantially affected by poor social and economic conditions. Moreover, as has been emphasized repeatedly in studies and commission reports, aboriginal offenders are, as a result of these unique systemic and background factors, more adversely affected by incarceration and less likely to be "rehabilitated" thereby, because the internment milieu is often culturally inappropriate and regrettably discrimination towards them is so often rampant in penal institutions (Gladue).*

Where available, Courts may Order a Gladue Report for Offenders Aboriginal Background

Judges must also consider "the types of sentencing procedures and sanctions which may be appropriate in the circumstances of the offender because of his or her particular aboriginal heritage or connection" (*Gladue*). In order to undertake these considerations the trial judge will require information pertaining to the accused. Where available, courts may order a *Gladue* report, rendering the offender's Aboriginal background. Judges must take judicial notice of the broad systemic and background factors affecting Aboriginal people and of the "priority given in aboriginal cultures to a restorative approach to sentencing" (*Gladue*). But information that is case-specific will usually come from a pre-sentence report, which in turn may come from representations from the offender's Aboriginal community" (*Gladue*).

If there is no alternative to incarceration the length of the term must be carefully considered (*Gladue*). The Court held that s. 718.2(e) is not a means of automatically reducing a prison sentence on account that an offender is Aboriginal. But in some circumstances the jail term for an Aboriginal offender may be less than the term handed down to a non-Aboriginal offender for the same offence (*Gladue*). Furthermore, in an oft-quoted statement, the Court stated that "generally, the more serious and violent the crime, the more likely it will be as a practical matter that the terms of imprisonment will be the same for similar offences and offenders, whether the offender is aboriginal or non-aboriginal" (*Gladue*).

R v Wells

A year later, the issue of the application of *Gladue* to serious cases returned to the Court in the case of *R v Wells*. In that case an Aboriginal offender had committed sexual assault while the victim was asleep or unconscious from the effects of alcohol. He appealed his 20-month custodial sentence, seeking to have it converted to a conditional sentence, arguing that the sentencing judge did not take into account the appropriate considerations required by s. 718.2(e).

The Court attempted to provide some clarification to the different treatment of Aboriginal offenders called for by *Gladue*. It indicated that "s. 718.2(e) requires a different methodology for assessing a fit sentence for an aboriginal offender; it does not mandate, necessarily, a different result" (*Wells*). The Court held that the trial judge was allowed to give primacy to the principles of denunciation and deterrence in this case on the grounds that the offence committed was "serious"; however, judges may still accord the greatest weight to restorative justice principles in sentencing for a serious crime if the "circumstances are appropriate" (*Wells*).

Issues arising from *Gladue* and *Wells*

Typically, changes to the Common Law take place in an incremental fashion. *Gladue*, however, is a judgment unlike any other. It radically departed from the premises that the criminal justice system serves all those involved, that it is not biased towards certain groups of people, and that the sentencing process may take place without regard to how meaningful it is to the offender (B. Knazan). It established a new legal framework for sentencing Aboriginal offenders which dramatically alters the duties of sentencing judges and counsel; this often requires substantially more time and resources than what courts are accustomed to. Additionally, the judgments in *Gladue* and *Wells* are ambiguous with respect to when the *Gladue* methodology will change anything in the context of serious offences. For these reasons, lower courts have struggled with how to implement the Gladue principles.

Recent decisions interpreting s. 718.2(e) reinforce some of the Gladue principles, but also demonstrate the difficulty courts continue to have in interpreting and applying them, ultimately leading to the Supreme Court having to deal with them in *R v Ipeelee*.

INCONSISTENT FILING OF GLADUE REPORTS

Pre-Sentence Reports

Following *Gladue* a number of sentencing judges began to render decisions using the *Gladue* methodology. These decisions appeared promising in that they displayed a noticeable change in how Aboriginals were sentenced by mentioning the circumstances of offenders as Aboriginals. Over time, however, judgments returned to the pre-

Gladue status quo; *Gladue* was only mentioned in passing and had little or no impact on the sentence imposed (J. Rudin). But in *R v Brizard* the Ontario Court of Appeal reduced a sentence for being a party to manslaughter from eight years' incarceration to five years – in part because the trial judge erred by not giving adequate weight to the Aboriginal background of the offender. In 2006, the Court expanded on *Brizard* in its highly significant decision in *Kakekagamick* – a decision that changed the legal landscape in Ontario with respect to *Gladue*.

R v Kakekagamick

In *Kakekagamick*, the Ontario Court of Appeal chastised Crown counsel, defense counsel, and the trial judge for not bringing forth information on the offender's circumstances as an Aboriginal as required by s. 718.2(e). The Crown and trial judge had only made passing reference to *Gladue* and the lawyer of the accused had made none. The Court held that there is "a positive duty on counsel to assist the sentencing judge in gathering information as to the aboriginal offender's circumstances" (*Kakekagamick*). This will most often come in the form of a pre-sentence report. But if the pre-sentence report does not contain enough details about the circumstances of the offender as an Aboriginal person then "counsel, and perhaps especially the Crown" must raise the issue. If counsel fails to do so then the sentencing judge has the obligation to attempt to acquire this information in "appropriate circumstances" and where such inquiries are "practicable". LaForme J. made it clear that inadequate consideration of *Gladue* was an error of law:

> [W]here a sentencing judge does not properly take into account the circumstances of the Aboriginal offender as required by s. 718(2)(e) of the *Criminal Code*, and fails to properly and adequately conduct the inquiry set out in Gladue, it amounts to an error justifying appellate intervention (*Kakekagamick*).

Further, LaForme J. held that if a sentencing judge does not take into account s. 718.2(e) "as fully as required" then the appeal court can request a Gladue report and it will be entered in as fresh evidence. The case represented a significant step forward by calling for a much more enthusiastic adherence to the Gladue principles. After *Kakekagamick*, judges began to order Gladue reports and became much more critical of the adequacy of submissions from counsel in order that their decisions were not reversed by the Court of Appeal (J. Rudin). The benefit of Gladue reports cannot be overstated. By providing information regarding an offender's circumstances as an Aboriginal, judges are provided with precisely the information that the Supreme Court has held they must acquire in order to properly apply *Gladue*. Moreover, Gladue reports are able to place "the offender in a broader social-historical group context" and "reframe the offender's risk/need by holistically positioning the individual as part of a community and as a product of many experiences" (Kelly Hannah-Moffat & Paula Maurutto). In contrast, conventional pre-sentence reports simply add on the Gladue factors as an addendum without regard to their context, which may actually contribute to discrimination by being understood simply as risk factors (Kelly Hannah-Moffat & Paula Maurutto).

After R v Kakekagamick: The Leadership of Ontario and R v Ipeelee

Since *Kakekagamick*, the Ontario Court of Appeal has been reticent about overturning decisions where judges applied the Gladue principles creatively and when the sentence handed down was less than what the Crown was seeking (J. Rudin). Professor Roach observed in a 2009 article a significant amount of regional variation when it comes to the application of the Gladue principles. The Court of Appeal in Ontario has been the most enthusiastic about interpreting and applying *Gladue*, while other courts, particularly in the western provinces, have been far more reticent to do so (K. Roach). This is likely due to the fact that Ontario is home to Aboriginal Legal Services of Toronto (ALST), an organization that provides "Gladue Caseworkers" who specialize in writing Gladue reports at the request of a court (see http://www.aboriginallegal.ca/index.php). Also, Ontario was the first to establish courts that specialize in hearing cases involving Aboriginal offenders (see http:/www.aboriginallegal.ca/gladue.php).

In *R v Ipeelee* the Supreme Court praised the usefulness of Gladue reports and emphasized the importance of the information they contain: "bringing such information to the attention of the judge in a comprehensive and timely manner is helpful to all parties at a sentencing hearing, as it is indispensable to a judge in fulfilling his duties under s. 718.2(e)" (*Ipeelee*). Hopefully the Supreme Court's recent affirmation of the Gladue principles and its praise of Gladue reports encourages the federal and provincial governments to allocate the necessary funding for more Gladue courts and organizations like ALST, as so far there has been little interest across the country.

IRREGULAR AND UNCERTAIN APPLICATION OF GLADUE: SERIOUS OFFENCES

Arguably, the most prominent issue that has arisen in the courts' struggle to interpret and apply *Gladue* has to do with the impact the Gladue principles have on sentences imposed for "serious" offences. After an extensive discussion of the importance of restorative justice principles when sentencing Aboriginal offenders, the Supreme Court in *Gladue* made the following oft-quoted qualifications:

> In describing the effect of s. 718.2(e) this way, we do not mean to suggest that, as a general practice, aboriginal offenders must always be sentenced in a manner which gives greatest weight to the principles of restorative justice, and less weight to goals such as deterrence, denunciation, and separation. It is unreasonable to assume that aboriginal peoples themselves do not believe in the importance of these latter goals, and even if they do not, that such goals must not predominate in appropriate cases. Clearly there are some serious offences and some offenders for which and for whom separation, denunciation, and deterrence are fundamentally relevant.

> Yet, even where an offence is considered serious, the length of the term of imprisonment must be considered. In some circumstances the length of the sentence of an aboriginal offender may be less and in others the same as that of any other offender. Generally, the more violent and serious the offence the more likely it is as a practical reality that the terms of imprisonment for aboriginals and non-aboriginals will be close to each other or the same, even taking into account their different concepts of sentencing (*Gladue*).

Similarly, in *Wells* the Supreme Court reaffirmed the importance of the objectives of restorative justice and exploring alternatives to sentences of incarceration for Aboriginal offenders. However, the Court then went on to state the following:

> Notwithstanding what may well be different approaches to sentencing as between aboriginal and non-aboriginal conceptions of sentencing, it is reasonable to assume that for some aboriginal offenders, and depending upon the nature of the offence, the goals of denunciation and deterrence are fundamentally relevant to the offender's community... [T]o the extent that generalizations may be made, the more violent and serious the offence, the more likely as a practical matter that the appropriate sentence will not differ as between aboriginal and non-aboriginal offenders, given that in these circumstances, the goals of denunciation and deterrence are accorded increasing significance (*Wells*).

Unfortunately, too often courts have drawn on these passages simply to exclude the application of *Gladue* to serious offences. Time and again when imposing sentences for serious offences, courts have used the objectives of denunciation and deterrence as the paramount considerations while downplaying the objectives of restorative justice. The chief reason for doing so is in order to abide by the principle of parity; sentencing judges have been concerned about unfairly giving Aboriginals a "discount" when similarly situated offenders would receive a tougher sentence.

The Supreme Court's Response in *R v Ipeelee*

In *R v Ipeelee* the Supreme Court addressed this issue and sent a strong message to lower courts that s. 718.2(e) creates a statutory obligation for sentencing judges to apply the Gladue principles in every case involving an Aboriginal offender regardless of the offence. A failure to do so would "result in a sentence that was not fit and not consistent with the fundamental principle of proportionality" (*R v Ipeelee*). The Court gave several reasons why not applying s. 718.2(e) in the context of serious offences would be illogical. First, neither common law nor statutory law makes any distinction between offences that are "serious" and those that are not. Thus, creating any such distinction would lead to inconsistency in the jurisprudence due to "the relative ease with which a sentencing judge could deem any number of offences to be 'serious'" (*Ipeelee* quoting R. Pelletier). Second, *Gladue* requires sentencing judges to consider the circumstances of the offender, "including the unique circumstances described in *Gladue*" (*Ipeelee*). Each offender is different and judges are called upon to sentence only the offender in front of them. Thus, it does not make sense to compare the sentence that the Aboriginal offender standing in front of them would receive to that of a hypothetical non-Aboriginal offender (*Ipeelee*). The Supreme Court's decision in Ipeelee is a positive one and will hopefully put an end to sentencing judges ignoring s. 718.2(e) in the context of serious offences.

Changing the Way Aboriginals are Sentenced Remains Problematic

However, even if *Ipeelee* is successful in making sentencing judges consider the unique circumstances of Aboriginals in every case, this will only deal with half of the problem – the other half of which is largely out of the Supreme Court's hands. The problem that remains is judges taking into account the circumstances of Aboriginals but not changing the way in which they sentence Aboriginal offenders. Professor Roach points to this tendency as taking two steps back after taking a step forward. Thus, he notes, the Ontario Court of Appeal in *Kakekagamick* sent a serious message to courts in that province to give serious consideration to the principles of Gladue. But when it came to applying *Gladue* to the facts it fell short of the ideal. In that case a 22-year-old first time offender became intoxicated from home brew he made on a reserve where alcohol is prohibited. Afterwards, he beat his domestic partner, causing her serious injuries, including fractured ribs, a fractured collarbone, and two broken vertebrae in her neck. The Court held that that the sentencing judge erred in not giving adequate consideration of *Gladue* as shown by the fact that he did not have access to the circumstances of the offender as an Aboriginal. However, due to the seriousness of the offence and the fact that he was of high risk to re-offend, the Court did not interfere with the sentence of five years' imprisonment (*Kakekagamick*).

SENTENCING THAT BETTER MEETS ABORIGINAL CUSTOMS AND NEEDS

Instead, the Court should have made use of principles of restorative justice by taking into account the opinions and considerations of his local community. Such connections with the community may give rise to options in sentencing which may not be apparent to an appellate court sitting, perhaps, thousands of miles away. Also, it may encourage an offender to accept responsibility for his or her conduct—an important part of healing. Instead, it seems the Court of Appeal gave deference to the opinions of the trial judge despite the fact that they were made in ignorance, without the help of a Gladue report (K. Roach).

Similarly, in three subsequent cases, the Ontario Court of Appeal accepted a Gladue report as fresh evidence but did not interfere with the sentence of the trial judge. In *R v Stevens* (2008), the Court held that the Gladue report added "little more than context" and upheld a 14-year period of parole ineligibility. In *R v Chickekoo* (2008) the Court found the Gladue report "helpful and necessary" but did not interfere with a sentence of 18 months of incarceration for aggravated assault. In *R v Whiskeyjack* (2008) the Court found the original pre-sentence report to be sufficiently detailed and affirmed a sentence of 2 years less a day for the aggravated assault of her two-year old child.

Recent Ontario Cases Involving Serious Offences: *R v Batisse*

Recently, however, the Ontario Court of Appeal has again proven itself as a leader in its interpretation and application of *Gladue*. (*note: My argument that Ontario is a leader in this regard does not imply that, overall, Aboriginals are not being discriminated against in sentencing and are generally being properly sentenced. Rather, I merely argue that Ontario is a leader relative to other provinces*). In the following noteworthy decisions, the Court relied on *Gladue* to make significant changes to sentences imposed by lower courts. In *R v Batisse* (2009) the Ontario Court of Appeal reduced a sentence of five years' incarceration to 2.5 years' incarceration in the case of a 30 year-old Aboriginal female offender who abducted an infant from a hospital. She had mental health issues but no prior criminal record and was a survivor of an extremely abusive childhood in which she was physically, emotionally and sexually abused.

Trial Judge Error

Gillese J.A. concluded that the trial judge had erred in relying on *Hill* (1994) – a case where a female offender committed the same offence but was not Aboriginal, did not encounter the same systemic factors, and had no mental illness. She also stressed that sentencing judges must use restraint when contemplating sentences of imprisonment, especially in the case of Aboriginal offenders. Furthermore, she stressed the impact that a sentence of incarceration would have on the offender, given that the prison is located 750 kilometers from her home. In dissent, Blair J.A. stressed appellate deference to the trial judge's decision and the principles of denunciation and deterrence (*Batisse*).

R v Peters: Conditional Release Not an Option

In *R v Peters* (2010) the offender was a twenty-six year old Aboriginal woman who pleaded guilty to aggravated assault. She had broken a beer bottle over the head of the victim, causing lacerations to her face and requiring 21 stitches. Nearly a year later, the victim was still experiencing pain and the scars remained visible. The offender had a history of alcohol and anger management problems, but did not have an adult criminal record. She had two youth convictions: assault causing bodily harm and a conditional discharge for the assault of her mother. At the sentencing hearing, the Crown sought a sentence of twelve to eighteen months' incarceration; the defense sought a suspended sentence followed by two years' probation. Under s. 742.1 of the *Criminal Code* aggravated assault cannot be the subject of a conditional sentence; thus, it was not an option. The sentencing judge imposed a suspended sentence of three years' probation.

Appeal determined inadequate sentencing

On appeal, the Crown submitted that the sentence was inadequate on the grounds that it did not give enough weight to the objectives of denunciation and deterrence. It argued for a period of incarceration. Blair J.A., writing for the majority, stressed the Gladue principles. He found no error in principle committed by the sentencing judge. In contrast, Watt J.A., in dissent, found the sentence to be "encumbered by error" and "manifestly unfit" (*R v Peters*). The majority and dissent (predictably) emphasized the relevant parts of Gladue regarding sentencing for serious offences that would support their position. Blair J.A. drew attention to the offender's recent employment as a bank teller and volunteer activities, as well as her violent upbringing, as detailed in a Gladue report. Watt J.A. focused more attention to her youth criminal record by detailing the circumstances of the offences.

R v Jacko: Ontario Court of Appeal upheld Gladue principles

In *R v Jacko* (2010), the Ontario Court of Appeal again used the Gladue principles to significantly reduce sentences for serious offences. The case involved two offenders, Jacko and Manitowabi, who appealed their four-year penitentiary sentences. They, along with two others, invaded an apartment, assaulted the two occupants (one of whom sustained injuries) and stole some of their property. The trial judge had rejected the recommendations from a sentencing circle that each offender serve his sentence in the community.

Four ways the trial judge erred

The Court of Appeal held that the trial judge erred in four ways. First, he failed to accord sufficient weight to the appellants' Aboriginal heritage and to the principle of restorative justice, noting that he appeared not to consider the impact of s. 718.2(e) when determining whether he should exclude a penitentiary sentence as an option. Secondly, he excluded the possibility of a conditional sentence of imprisonment on the grounds that the sentencing objectives of deterrence and denunciation were of paramount concern when conditional sentence may still accomplish these objectives. Thirdly, he did not give adequate weight to the nature of the community and to the recommendations of the sentencing circle (a reflection of the views of the community). Fourthly, the trial judge treated a Common Law guideline that gave a range of sentence in home invasion cases as "imposing a de facto minimum sentence for these offences" (*Jacko*).

With regard to Jacko, the Court of Appeal deemed that a conditional sentence of two years less a day was appropriate in the circumstances. The Court took note of his significant rehabilitative efforts (including sobriety, achieving considerable academic success and being responsible

for his two young children) and concluded that he no longer posed a danger to the community. In a notable statement, it explained the impact of the offender's significant rehabilitative efforts and the objectives of restorative justice: "In cases such as these, we must do more than simply acknowledge restorative justice sentencing objectives and note approvingly the rehabilitative efforts of those convicted. They must have some tangible impact on the length, nature and venue of the sentence imposed" (*Jacko*).

Gladue Report credited

With regard to Manitowabi, the Court deemed that a sentence of two years' imprisonment was appropriate. Unlike Jacko, he had not been either persistent or consistent in his efforts at self-rehabilitation. Also, he was deemed likely to reoffend. It is important to note that when reducing the sentences of both offenders, the Court did not stress the importance of their likelihood to reoffend; rather, it made frequent reference to the Gladue principles. It is also important to note that the Court credited a Gladue report and the recommendations from the sentencing circle for fully developing the restorative justice considerations (*Jacko*).

R v Ipeelee may convince judges to take Gladue principles seriously

Hopefully the Supreme Court's decision in *Ipeelee* finally convinces sentencing judges across the country to take the Gladue principles seriously by taking into account the unique circumstances of Aboriginal offenders in every case and considering alternative sanctions to imprisonment, but, more importantly, to also use that information to craft sentences that better meet the needs of Aboriginal offenders and their communities.

SYSTEMIC AND BACKGROUND FACTORS OF THE ACCUSED

Is a Causal Connection Necessary?

Another important issue that has caused lower courts to struggle is whether the systemic and background factors require a direct, causal connection to the commission of the offence. For example, in *R v Collins* (2011) the offender, a 51 year-old Aboriginal woman, pleaded guilty to welfare fraud, which took place in and caused harm to her First Nation reserve community. She received a 16-month sentence of incarceration with two years of probation, and a restitution order for $96,000. In his judgment the trial judge stated that the most important consideration in major fraud cases are denunciation and deterrence and that rehabilitation of the accused is secondary (*R v Collins*).

Trial Judge's Argument for a Causal Connection

The trial judge recognized that the accused had grown up in abject poverty, that she had been abused, and that she suffered from a severe gambling addiction. However, he found that there was no evidence to support the argument that systemic factors were responsible for bringing the accused before the court. Further, he stated that the offender could not absolve herself from the consequences of her actions by blaming her upbringing or other people (*Collins*).

The Supreme Court's Response in *R v Ipeelee*

In *Ipeelee* the Supreme Court clarified that such a causal connection between the systemic and background factors and the commission of the offence was unnecessary. It held that judgments suggesting otherwise do not take into account "the devastating intergenerational effects of the collective experiences of Aboriginal peoples." Moreover, establishing a causal connection would impose an extremely difficult evidentiary burden on Aboriginal offenders. As the Aboriginal Justice Inquiry of Manitoba stated, [c]ultural oppression, social inequality, the loss of self-government and systemic discrimination, which are the legacy of the Canadian government's treatment of Aboriginal people, are intertwined and interdependent factors, and in very few cases is it possible to draw a simple and direct correlation between any one of them and the events which lead an individual Aboriginal person to commit a crime or to become incarcerated (*Ipeelee*).

Furthermore, the Court held that s. 718.2(e) does not logically require a causal connection. While the systemic and background factors may shed light on the culpability of the offender, they do not function as an excuse or justification for the offence. Their purpose, rather, is to situate the offender within the larger social-historical context so that judges are able to determine the appropriate sentence (*Ipeelee*).

CONCLUSION

This article has highlighted three broad issues that have caused lower courts great difficulty, ultimately resulting in the Supreme Court having to decide *Ipeelee* years later.

Properly written pre-sentence reports are extremely important because without adequate information on the circumstances of the offender as an Aboriginal, judges are unable to craft an appropriate sentence according to the requirements of *Gladue*. Also, if the pre-sentence report does not situate the offender within a broader social-historical context then there is a danger that the background and systemic factors will be counted merely as risk factors, thereby perpetuating the problem.

The issue of the impact that *Gladue* has on sentences for serious offences is also significant. Most prisoners, whether Aboriginal or not, are incarcerated for the commission of serious crimes. Thus, if *Gladue* has no role to play in sentencing for serious crimes then there is little hope for challenging Aboriginal overrepresentation.

Finally, the issue of the relationship between the background and systemic factors on the one hand and commission of the offence on the other is very important because if a direct, causal relationship was required, it would be near impossible for an offender to prove and would, thus, render the *Gladue* principles useless.

R v Ipeelee May Pave the Way

Too often the courts have interpreted the *Gladue* principles in a way that gives them little, if any,

effect; however, when they are adhered to, they provide a possibility for changing the way Aboriginals are sentenced. Therefore, despite an increase in the overrepresentation of Aboriginals in Canadian prisons, *Gladue* may still be seen as a step forward in at least providing the framework for alleviating Aboriginal overrepresentation through the sentencing process.

Hopefully Ipeelee causes lower courts to take the *Gladue* principles seriously and change the way Aboriginals are being sentenced. The determinants of Aboriginal overrepresentation are complex and multi-faceted and call for a holistic solution involving much more than the limited role of sentencing judges. Yet, by virtue of being on the front lines of such an effort, sentencing judges do have an important role to play. By enthusiastically embracing the *Gladue* principles and attempting to accomplish what the Supreme Court set out to do, judges are able to craft very different sentences that challenge Aboriginal overrepresentation in Canada. ●●

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Mark Carter est détenteur d'un diplôme combiné de Juris Doctor (JD) et de maîtrise en criminologie de l'Université de Toronto ; dans cet article instructif, il se penche sur l'application de l'arrêt R. c. Gladue de la Cour Suprême du Canada, portant sur l'interprétation de l'article 718.2(e) du Code criminel du Canada. La cour a statué que l'art. 718.2(e) imposait au juge du procès le devoir de considérer 1) les facteurs systémiques ou l'historique unique qui auraient pu contribuer à ce que cette accusée autochtone se retrouve devant la cour ainsi que 2) la nature des procédures de détermination de la peine et des sanctions qui pourraient s'avérer convenables en regard des circonstances de l'accusée en raison de sa connexion ou de son héritage autochtone particulier. Le but de cette disposition et de la nouvelle « méthodologie Gladue » est de contribuer à atténuer le problème de la surreprésentation des Autochtones dans les prisons canadiennes. Toutefois, comme l'explique cet article, la surreprésentation des Autochtones en milieu carcéral n'a fait que s'accentuer depuis l'arrêt Gladue.

LA SURREPRÉSENTATION CARCÉRALE DES AUTOCHTONES AU CANADA

PAR MARTINE ROBITAILLE, Candidate au doctorat en Criminologie – Université d'Ottawa

Depuis plusieurs années, nous remarquons au Canada une disparité entre la population autochtone dans le système de justice pénale et la population autochtone dans la société générale. Cette surreprésentation carcérale des Autochtones est évidente en comparant le nombre d'autochtones dans la société générale, soit 2,8%, et le nombre d'autochtone dans la population carcérale fédérale, soit 18% (SCC, 2003). Étant donné l'ampleur du problème de surreprésentation carcérale des autochtones, plusieurs réformes des politiques et des programmes ont été mise en place par le Service Correctionnel du Canada pendant les années 1990 pour y remédier.

ARTICLES AMENDÉ: DISPOSITIONS SPÉCIFIQUES POUR LES DÉLINQUANTS AUTOCHTONES

Au niveau de la *Loi sur le système correctionnel et la mise en liberté sous condition* (LSCLMC) et du *Code Criminel* canadien, certains articles ont été amendé pour inclure des dispositions spécifiques pour les délinquants autochtones: transfert possible des services correctionnels dans les communautés autochtones (LSCLMC, art. 81); programmes de réintégration spécifiques aux délinquants autochtones (LSCLMC, art. 84); recours d'alternatives comme peines avant l'incarcération surtout pour les autochtones (*Code Criminel*, art. 718.2 e), etc. (SCC, 2003; Knazan, 2003).

NOMBREUX PROGRAMMES MIS EN PLACE DANS LE SYSTÈME CORRECTIONNEL

Nombreux programmes ont également été mis en place dans le système correctionnel: pavillons de ressourcement, établissement résidentiels dans les communautés autochtones, rencontres avec les aînés, cercles de guérison dans les établissements carcérales, etc. (SCC, 2003; Knazan, 2003). En 1997, un plan d'action national sur les services corrections pour les autochtones a aussi été élaboré pour réduire le taux d'incarcération des autochtones au Canada (SCC, 2003). Malgré les nombreuses réformes du Service Correctionnel du Canada, la surreprésentation carcérale des Autochtones n'a pas diminué et demeure toujours un problème important.

UNE MANIÈRE DE COMPRENDRE LE PROBLÈME DE SURREPRÉSENTATION DES AUTOCHTONES AU CANADA

Parmi les nombreuses explications possibles de cette surreprésentation, nous soutenons que trois d'entre elles sont prédominantes: l'explication historique, l'explication culturelle et l'explication structurelle. En regardant ces explications, nous proposons une manière de comprendre le problème de surreprésentation des autochtones au Canada.

EXPLICATION HISTORIQUE

Une des explications que nous proposons pour comprendre la surreprésentation carcérale des autochtones au Canada est historique. Nous soutenons que la surreprésentation des Autochtones fut engendrée d'une part, par le colonialisme et d'autre part, par le « cycle de trauma » (Frideres, 1998).

LE COLONIALISME

LE COLONIALISME S'EST PRODUIT EN SIX ÉTAPES SUCCESSIVES (FRIDERES, 1998: 3):

- La première étape fut **l'entrée géographique des Européens au Canada** où le premier contact s'est fait entre les Autochtones et les Européens (Frideres, 1998: 3).
- La deuxième étape fut l'**assimilation des Autochtones** où les Européens ont détruit le système économique, politique et culturel des Autochtones et mis de côté les valeurs et les traditions des Autochtones (Frideres, 1998: 3). Un partenariat fut créé entre l'église chrétienne et l'État pour mettre en place des écoles résidentielles pour les enfants autochtones (Miller, 1996: 199).
- La troisième étape fut le **contrôle politique externe**, c'est-à-dire que le gouvernement euro-canadien fut imposé aux Autochtones. Ce dernier a enlevé les terres des Autochtones et n'accorda aucune représentation politique aux autochtones (Frideres, 1998: 3). Nombreuses revendications ont eu lieu de la part des autochtones pour se réapproprier de leurs terres. De plus, ce n'est pas avant les

années 1960 que les Autochtones ont eu le droit de vote sur les réserves (Cairns, 2000: 146). Les Autochtones sont donc devenus économiquement dépendants du gouvernement euro-canadien (Frideres, 1998: 4). Avec la *Loi sur les Indiens* de 1876, aucun développement économique sur les réserves fut possible (Frideres, 1998: 25). Les Autochtones avaient ainsi besoin de l'aide financière du gouvernement euro-canadien pour survivre (Frideres, 1998: 4). De nos jours, cette dépendance est toujours présente en raison des problèmes socioéconomiques des Autochtones. Mentionnons brièvement quelques faits: plus de 25% des autochtones n'ont pas d'emploi; parmi ceux qui ont un emploi, 46% d'entre eux sont sous le seuil de la pauvreté puisqu'ils gagnent moins de 10 000$ annuellement; et le salaire moyen pour les autochtones est 15 700$, ce qui est seulement 62% du salaire accordé aux non autochtones (Dickson et LaPrairie, 200 : 37).

- La quatrième étape fut la **qualité des services sociaux dans les réserves** (Frideres, 1998: 6). Les standards de santé étaient inférieurs à ceux des non autochtones. L'éducation était souvent négligée ou peu valorisée, les soins de santé pour les autochtones étaient peu développés et les infrastructures municipales étaient également négligées. De nos jours, les services sociaux sont de meilleure qualité mais demeurent toujours inférieurs à ceux pour les non autochtones (Frideres, 1998: 6).
- La cinquième étape du colonialisme fut **les discours racistes** (Frideres, 1998: 7). Deux types de discours furent mis en place concernant les Autochtones: les Autochtones étaient considérés d'une part, biologiquement inférieurs aux non autochtones et d'autre part, culturellement inférieurs aux non autochtones (Frideres, 1998: 7). Ces types de discours sont toujours présents dans les discours du système de justice pénale. La dernière étape, greffée à la cinquième, fut l'établissement d'une différence à partir de la pigmentation de la peau et de la structure corporelle qui déterminaient l'infériorité ou la supériorité d'un individu.

LE « CYCLE DE TRAUMA »

Le « cycle de trauma » fut engendré par le colonialisme qui lui, a créé un **choc émotionnel** qui a perturbé le développement psychologique des autochtones à long terme (Gagné, 1998: 358). Le colonialisme a **engendré une dépendance sociale, économique et politique des autochtones envers le gouvernement canadien** (Gagné, 1998: 358). **Le sous-développement des réserves** a entrainé la pauvreté, la désorganisation sociale et le dysfonctionnement familial (Gagné, 1998: 60). **L'assimilation culturelle vécue dans les écoles résidentielles** a mené au **« syndrome du pensionnat», c'est-à-dire la consommation excessive de drogues et/ou d'alcool pour oublier les expériences traumatisantes vécues lors des séjours résidentiels** (Gagné, 1998: 363).

LES EFFETS DU COLONIALISME ONT ENTRAÎNÉ LA CONSOMMATION, LA VIOLENCE, LA DÉSORGANISATION CULTURELLE, ETC., AU SEIN DES FAMILLES AUTOCHTONES...

Ces effets du colonialisme ont entraîné la consommation, la violence, la désorganisation culturelle, etc., au sein des familles autochtones (Gagné, 1998: 365). L'enlèvement des terres, la perte de culture, les abus vécus aux écoles résidentielles sont des évènements traumatisants qui se manifestent par le syndrome du stress post-traumatique (Raphael et Swan, 1998: 330). Les effets de ce syndrome, biologiques ou psychologiques, sont transmis à travers les générations (Raphael et Swan, 1998: 331). La vulnérabilité génétique peut être liée à des problèmes de santé comme l'alcoolisme. Les effets du syndrome du stress post-traumatique peuvent être liés à des facteurs sociaux ou psychologiques comme la transmission d'abus, la perte d'habiletés parentales, etc. (Raphael et Swan, 1998: 331-335). En regardant le colonialisme et le cycle de trauma, nous pouvons constater que les autochtones ont un bagage historique qui influence leur comportement qui transgresse les lois.

EXPLICATION CULTURELLE

LE CADRE DE RÉFÉRENCE DU SYSTÈME DE JUSTICE PÉNALE CANADIEN DIVERGE DE CELUI DES AUTOCHTONES CAR IL REPOSE SUR DES VALEURS, CROYANCES ET TRADITIONS QUI LUI SONT PROPRES

Une autre explication pour comprendre la surreprésentation carcérale des autochtones est la différence culturelle entre les cultures autochtones et la culture canadienne du système de justice pénale. La culture canadienne du système de justice pénale repose sur des valeurs, croyances et traditions qui lui sont propres. Il est donc erroné qu'elle essaye de comprendre la réalité des Autochtones à partir de son cadre de référence qui est divergent de celui des Autochtones (Ross, 1992: 6). Si le système de justice pénale regarde les actions des autochtones à travers ses lunettes, il y aura inévitablement des fausses interprétations (Ross, 1992: 3).

LE NON-VERBAL... UNE AUTRE DIFFÉRENCE CULTURELLE

Si un accusé autochtone ne regarde pas un juge lorsqu'il témoigne, le juge en déduira probablement que l'accusé n'est pas honnête dans son discours (Ross, 1992: 18). Toutefois, si on observe le même scénario à partir des valeurs et des croyances des autochtones, on déduira que le geste de l'accusé

autochtone est respectueux (Ross, 1992: 19). Dans les cultures autochtones, un autochtone, pour être respectueux, doit baiser la tête lorsqu'il parle et lever les yeux seulement qu'à quelques reprises pour signaler qu'il est attentif (Ross, 1992: 19). Il est donc évident que si un juge considère les propos d'un accusé autochtone à partir des valeurs canadiennes, il sera plus enclin d'interpréter les propos de l'accusé comme faux et donc, le déclarer coupable.

LA CONFRONTATION... UNE AUTRE DIFFÉRENCE CULTURELLE

Une autre différence culturelle est le refus d'un accusé ou d'une victime autochtone de témoigner au tribunal (Ross, 1992: 7). Si un autochtone reste muet lors de son témoignage, le juge peut interpréter ce geste de deux manières : soit le témoin est craintif des représailles de son témoignage ou soit le témoin ment. Ces interprétations engendrent les conséquences suivantes: les témoignages ne sont pas considérés comme des preuves solides, les Autochtones auront souvent une défense faible et seront donc généralement déclarés coupables des chefs d'accusations portés contre eux. Toutefois, ce même scénario est considéré comme respectueux à partir de la valeur de la non interférence des cultures autochtones selon laquelle il est interdit de dénoncer, suggérer ou commenter un propos d'un individu en sa présence (Ross, 1992: 8-9).

LES ÉMOTIONS — LES CULTURES AUTOCHTONES DÉCOURAGENT L'EXTÉRIORISATION DES ÉMOTIONS ALORS QUE LE SYSTÈME DE JUSTICE PÉNALE L'ENCOURAGE...

Une autre différence culturelle est que les cultures autochtones découragent l'extériorisation des émotions alors que le système de justice pénale l'encourage (Ross, 1992 : 32-34). Les cultures autochtones découragent l'extériorisation des émotions puisque ceux-ci sont un signe de faiblesse (Ross, 1992: 32). Pour les Autochtones, l'intériorisation des sentiments permet la survie des individus (Ross, 1992: 32). Contrairement aux cultures autochtones, le système de justice pénale, lui, considère que l'extériorisation des émotions est importante puisque devant le tribunal, un accusé qui démontre des émotions est considéré comme éprouvant des remords et donc plus réhabilitable dans la société (Ross, 1992: 34). Si un individu montre aucun remords devant le tribunal, le juge considèrera que l'individu doit être puni plus sévèrement pour qu'il réalise la gravité de son acte criminel.

CONCEPTS DE GUÉRISON ET DE TRAITEMENT QUI RÉPONDENT AUX BESOINS...

Les cultures autochtones reposent sur le concept de guérison et non celui de traitement qui préconise le système de justice pénale (Waldram, 1997). Pour les cultures autochtones, la guérison est importante pour remédier aux souffrances antérieures, tant celles vécues comme victime que celles causées comme agresseur, afin de retrouver son équilibre comme personne autochtone et être accepté dans sa communauté autochtone (Waldram, 1997). Les programmes thérapeutiques répondent aux besoins criminogènes des non-autochtones tandis que les programmes de guérison répondent aux besoins généraux des autochtones (Waldram, 1997). Nombreux détenus autochtones ne vont pas participer aux programmes thérapeutiques du Service Correctionnel du Canada (SCC) sous prétexte qu'ils ne répondent pas à leurs besoins de guérison (Waldram, 1997). Les programmes qui sont offerts pour répondre aux besoins des Autochtones se retrouvent dans les institutions carcérales à sécurité minimum (Welsh et Ogloff, 2000: 74). Ces programmes ont peu d'influence sur les délinquants autochtones qui, majoritairement, se retrouvent dans les institutions carcérales à sécurité médium ou maximum (Welsh et Ogloff, 2000: 473).

LES PHILOSOPHIES DIVERGENT...

Les philosophies entre le système de justice pénale et les cultures autochtones divergent dans la mesure où le système pénal a une philosophie de rétribution tandis que les cultures autochtones ont une philosophie de réparation. Pour le système de justice pénale, s'il y a crime, une peine doit lui être nécessairement associée car pour dénoncer la violation d'une valeur sociale, il est nécessaire de punir le transgresseur (Carbasse, 2000: 244). Pour les cultures autochtones, l'intérêt n'est pas de punir un individu mais plutôt de réparer les dommages causés par un tort social qui a engendré des répercussions directes et indirectes dans l'ensemble de la communauté (Larocque, 1997: 300). Pour rétablir l'harmonie collective, c'est alors l'ensemble de la communauté qui doit participer et veiller à réparer les dommages causés par le tort identifié (Larocque, 1997: 300). Il est donc évident qu'il y a un écart culturel entre les cultures des autochtones et la culture canadienne du système de justice pénale, engendrant ainsi la criminalisation des autochtones.

EXPLICATION STRUCTURELLE

La dernière explication pour comprendre la surreprésentation carcérale des autochtones que nous proposons est structurelle. Nous retrouvons à l'intérieur de la structure du système de justice pénale une série d'étapes de prise en charge qui fait en sorte que les Autochtones sont surreprésentés. Les autochtones sont plus susceptibles d'être appréhendés par les corps policiers, d'avoir plusieurs chefs d'accusations portés contre eux, d'être maintenus en détention pour attendre le procès, d'être déclarés coupables des chefs d'accusations portés contre eux et de subir une peine d'incarcération.

LES AUTOCHTONES SONT PLUS SUSCEPTIBLES D'ÊTRE APPRÉHENDÉS PAR LES CORPS POLICIERS...

Les Autochtones sont plus susceptibles d'être appréhendés par les corps policiers tout d'abord raison de leur précarité socioéconomique (Dickson et LaPrairie, 2005: 37). Les policiers sont très présents dans les milieux défavorisés, caractérisés par la pauvreté, un taux de chômage élevé, un taux de mortalité élevé causé par des accidents et de la violence (Griffiths, 1994: 125). L'alcoolisme est un problème très visible chez les autochtones (non pas qu'ils consomment plus que les non autochtones mais les endroits où ils consomment et fréquentent en état d'intoxication sont eux visibles). La consommation et la violence sont souvent associées et visibles et donc, l'intervention policière est plus fréquente (Griffiths, 1994: 125). Finalement, les nombreux signes de dysfonctionnement familial et communautaire font en sorte que l'activité policière est souvent concentrée dans les milieux défavorisés (Griffiths, 1994: 125).

LES AUTOCHTONES SONT PLUS SUSCEPTIBLES DE RECEVOIR PLUSIEURS CHEFS D'ACCUSATIONS...

Les Autochtones sont plus susceptibles de recevoir plusieurs chefs d'accusations portés contre eux comparativement aux non autochtones. Le contexte dans lequel les crimes sont commis influence le nombre de chefs d'accusation: si l'individu était intoxiqué, s'il possédait une arme illégale, s'il a proliféré des menaces, s'il a résisté à l'arrestation policière, etc. (Robert et Melchers, 2003: 218). La précarité économique influence également le nombre de chefs d'accusations: possibilité parfois limité d'avoir recours à un avocat. Sans avocat, aucune négociation avec l'avocat de la Couronne n'est possible pour faire tomber des chefs d'accusation. Si l'individu est représenté par un avocat, ce dernier peut négocier de plaider coupable à seulement à une accusation à condition que l'avocat de la Couronne laisse tomber les autres accusations (Robert et Melchers, 2003: 218). Le nombre de chefs d'accusation influence la peine que l'accusé recevra: plus il y a de chefs d'accusation, plus le crime est grave et plus la peine sera sévère. Peu d'autochtones ont les moyens financiers de se faire représenter par un avocat, devant donc avoir recours à un avocat de l'aide juridique (s'ils qualifient pour ce service) ou se représenter eux-mêmes (Robert et Melchers, 2003: 218).

LES AUTOCHTONES SONT PLUS SUSCEPTIBLES D'ÊTRE REFUSÉ LA LIBERTÉ PROVISOIRE SOUS CAUTION...

Les autochtones sont plus susceptibles d'être refusé la liberté provisoire sous caution devant le tribunal. Ils sont donc plus souvent maintenus en détention en attente de leur procès (Robert et Melchers, 2003: 218). Nombreux facteurs influencent ce refus, notamment le risque de récidive, le manque de soutien de la communauté, le chômage, la toxicomanie, etc. (Robert et Melchers, 2003: 218). Les accusés qui sont maintenus en détention en attente de leurs procès sont considérés dans les statistiques carcérales annuelles (Robert et Melchers, 2003 : 219).

LES AUTOCHTONES SONT PLUS SOUVENT DÉCLARÉS COUPABLES...

Les autochtones sont plus souvent déclarés coupables que les non autochtones puisqu'ils ne comprennent pas la distinction entre la culpabilité de fait et la culpabilité légale (Ross, 1992: 15). Il y a culpabilité de fait si l'individu a commis le crime et il y a culpabilité légale si le juge et le jury possèdent assez de preuves convaincantes pour déclarer l'accusé coupable des chefs d'accusation portés contre lui. Ne comprenant pas cette distinction et cherchant à se faire accepter par les membres de leurs communautés, les autochtones vont généralement plaider coupable aux chefs d'accusations portés contre eux (Ross, 1992: 14). Souvent, les accusés autochtones ne subissent pas de procès car ils font une déclaration préalable de culpabilité (Ross, 1992: 16). Ils se présentent donc devant un juge pour recevoir une peine.

LES AUTOCHTONES VONT RECEVOIR PLUS SOUVENT DES PEINES CARCÉRALES

Les autochtones vont recevoir plus souvent des peines carcérales comparativement aux non autochtones puisque leurs crimes sont généralement contre autrui (Welsh et Ogloff, 2000: 473). Le système de justice pénale considère qu'un crime contre autrui est plus grave qu'un crime contre la propriété privée (Cauchie, 2009). On doit donc octroyer aux «vrais crimes» des «vraies peines» (Cauchie, 2009). L'amende et les travaux communautaires ne sont pas considérés comme des peines sévères comparativement à la peine de prison. Malgré les lois qui préconisent l'incarcération comme mesure de dernier recours et favorisent les alternatives (surtout pour les délinquants autochtones), les autochtones subissent souvent une peine d'incarcération.

MOINS SUSCEPTIBLES DE RECEVOIR UNE LIBÉRATION CONDITIONNELLE TOTALE ET PLUS SUSCEPTIBLES D'ÊTRE LIBÉRÉS D'OFFICE...

Les détenus autochtones sont moins susceptibles de recevoir une libération conditionnelle totale (LCT) et plus susceptibles d'être libérés d'office. Seulement 34% des détenus autochtones se font accorder une libération conditionnelle totale, comparativement à 41% des détenus non autochtones (Welsh et Ogloff, 2000: 472). En contrepartie, environ 48% des détenus autochtones obtiennent une libération d'office (LO), comparativement à 29% des détenus non autochtones (Welsh et Ogloff, 2000: 472). Ces différences s'expliquent par plusieurs facteurs: les détenus autochtones appliquent

moins que les détenus autochtones pour la libération conditionnelle totale car ils ont peu de connaissances au sujet du processus de celle-ci; les détenus autochtones sont majoritairement incarcérés pour des crimes contre autrui; ils possèdent souvent des antécédents judiciaires provinciaux et sont donc évalués comme plus à risque de récidiver et; plus de la moitié des autochtones en libération conditionnelle totale sont réincarcérés pour un bris de condition ou récidive (Welsh et Ogloff, 2000: 473).

LA SURREPRÉSENTATION DES AUTOCHTONES DANS LES PÉNITENCIERS FÉDÉRAUX

Le niveau de risque d'un détenu est influencé par le type de crime commis. Les autochtones qui commettent des crimes contre autrui sont donc classés dans des catégories de risque moyen ou élevé (Welsh et Ogloff, 2000: 473). Les détenus autochtones ont souvent un problème de toxicomanie, un dysfonctionnement familial, un faible niveau d'éducation et peu d'expérience de travail (Welsh et Ogloff, 2000: 480). La classification du risque moyen ou élevé et le profil des autochtones font en sorte que les détenus autochtones sont moins enclins d'appliquer pour la LCT (Welsh et Ogloff, 2000: 484). Parmi ceux qui appliquent, très peu d'entre eux se font accorder la LCT par la Commission nationale des libérations conditionnelles (CNLC) (Welsh et Ogloff, 2000: 483). La CNLC accorde très peu de LCT aux détenus autochtones car ceux-ci participent peu aux programmes correctionnels, ont peu de support dans la communauté, plusieurs problèmes individuels, peu d'éducation et peu de possibilités d'emploi (Welsh et Ogloff, 2000: 485). La CNLC juge donc que les détenus autochtones ne sont pas outillés pour réintégrer la communauté et les maintiennent plus longtemps incarcérés.

CONCLUSION

Le problème de surreprésentation carcérale des Autochtones est toujours présent car les réformes du système de justice pénale ne s'attaquent pas aux fondements du problème. En remédiant au problème à partir des explications historique, culturelle et structurelle, un changement positif est envisageable. Toutefois, un changement réel et durable est-il possible dans le système de justice pénale? Ce système ne produit-il pas la criminalité des Autochtones car elle lui est favorable pour légitimer son existence? Si l'on veut vraiment résoudre le problème de surreprésentation carcérale des Autochtones, il importe de mettre en place des solutions à l'extérieur du pénal pour justement empêcher la prise en charge pénale.●●

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Author Martine Robitaille here explores the overrepresentation of Aboriginal people in Canadian prisons as evidenced by the fact that 18% of the federal prison population is comprised by Aboriginals, a group constituting a mere 2.8% of the Canadian population. To promote understanding of this grievous situation, Robitaille provides an insightful look at historical, cultural and structural components that she feels have culminated in the overrepresentation of members of Canada's Aboriginal communities within our justice system. In this compelling article, Robitaille also explores and explains the various legislative changes and numerous programs that have been implemented since the 1990's to counter this situation, noting that in spite of such measures, the problem remains vital in 2013.

EVERYBODY'S NIGHTMARE, "DEALING WITH THE DEVIL"

BY DEBORAH GLOVER, Criminal Psychology & Behaviour, Centennial College

With Special Acknowledgement to My Mentor, Takis Liris, Founder of OASIS (http://www.oasismovement.org), Addiction Recovery Society in Toronto, Ontario... servicing the community in which the author facilitated the Pre-Employment Personal Life Management Program

In Part I of this article, which appeared in Volume 28.1 of the Justice Report, author Deborah Glover provided an overview of the case(s) of serial killer Paul Bernardo and Karla Homolka, including the demographics, theories on their respective criminal profiles, information regarding their trials and sentencing and a number of blunders that cast a negative light on Toronto Police Services, Niagara Police Services and the Centre of Forensic Sciences. Glover also took a look at the impact of this case on the Criminal Code of Canada, with Bill C-23 (requiring violent criminals including Karla Homolka to give a sample to the National DNA Bank) and Bill C-26 (giving the Parole Board the power to refuse a pardon for any reason), noting also the perceived grievous effects of C-23 on the criminal justice system.

In Part II, Glover now elaborates Mr. Justice Archie Campbell's 1996 six-month investigative inquiry concerning Toronto and Niagara Police Services and the Centre of Forensic Sciences, which found this case to be hampered by dozens of officers' rivalries between police departments and further complicated by the fact that the introduction of criminal profiling (aka offender profiling) as a new investigative tool was still in the infancy stage of acceptance by Canadian policing and relative lack of information technology systems at that time, such as case management software and a central repository for the inter-jurisdictional sharing of information.

PART II - CONTINUED FROM VOLUME 28.1

OVERVIEW OF 1996 INVESTIGATION

Mr. Justice Archie Campbell's 1996 investigation concluded that some of Bernardo's crimes could have been prevented had the task force acted on several key factors, including if the report filed by Sergeant McNiff to Toronto Police Services and been processed by both Toronto Police Services and the Green Ribbon Task Force, as well as with the processing of DNA samples, in a more timely fashion (Campbell, 1996).

Campbell's report details Detective Irwin explaining that the Scarborough rapes had stopped and Toronto Police had refocused on other duties and, this was why, Bernardo was not interviewed until November 1990.

Lack of cooperation and coordination /communication capacities

Because of Mr. Justice Archie Campbell's findings of a dismal lack of communication and co-operation between police services in Ontario and that multi-jurisdictional major case investigations could be improved, Ontario now has in place a Link Case Management System headed up by a Serial Predator Crime Investigation Coordinator (SPCIC). This position was created to bring together representatives from all jurisdictions so that information could be shared collectively (Clairmont, 2012).

Lack of a Central Data Repository negated benefits of existing tracking systems

Although ViCLAS (Violent Crime Lineage System), MCF (Major Crime File), and CPIC, (Canadian Police Information Center) were available for tracking. all required a "central" repository to capture, collate and compare violent crimes (Royal Canadain Mounted Police, 2012). At the time of Bernardo's spree, these were not readily available to all Ontario Police Forces.

Targetted multijurisdictional Case Management software developped in 2002, in use by 2005

In 2002, a software company Xanalys developed case management software "PowerCase" that is a "central database", M.C.M. (Major Case Management) available to all police jurisdictions. In 2005, all Ontario police were legislated to utilize this software (Xanalys The Investigative Software Company, 2012).

Other systemic flaws revealed in the Inquiry

Other suggestions for ensuring police thoroughness were more education and training in regards to violent crimes, better communication among police officers, and a faster response to DNA turn-around time as it relates to submissions.

SERIAL KILLER CLASSIFICATION IN THE DSM

The DSM IV-TR and DSM V indicates that Antipersonality Disorder falls under Cluster "B" of personality disorders, and that psychopaths and sociopaths are formed as two divisional classes under this diagnosis of ASPD. Today, there are thousands of psychopaths functioning in society, but when unresolved anger is combined with childhood stressors, this can lead to the making of "monsters".

Psychopaths are incapable of empathy or compassion, and demonstrate no fear. Compressed anger, when coupled with jealousy and media (pornography and violence), can be further contributing factors and should not be discounted.

Childhood Factors, Public Education and Early Detection

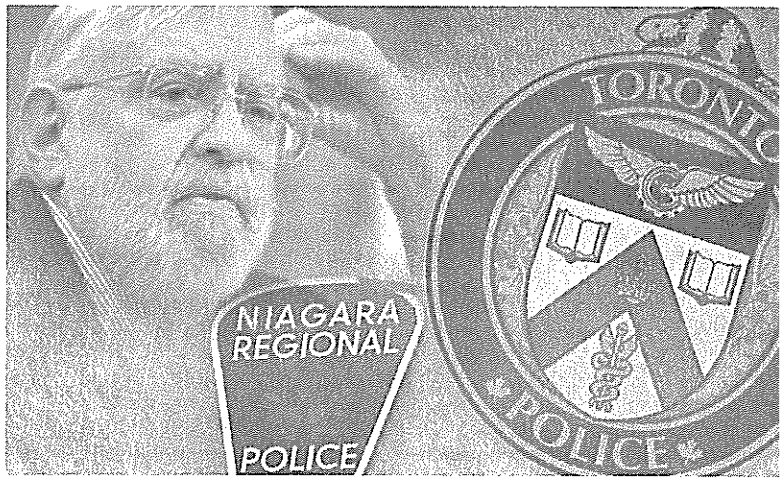
Early detection is paramount and, as such, public education is important in understanding the making of serial killers. Addressing "bullying" is a start, but it is just the tip of the iceberg, as we are seeing very much in the media today. Serial killers can have either biological (genetic), physiological, psychological, social or a combination of bio-psycho-social factors in their childhood that are hidden from teachers and communities until it is too late.

Why do serial killers kill?

Since the 1800's, numerous theories have surfaced as a result of much research as to why serial killers kill. Such theories include biological theories such as genetic factors and neurological abnormalies of the brain; psychological theories including moral development, social learning theories (Bandura); personality theories (ego, super ego and id); and, as well, environmental and social theories.

This author does not believe that Bernardo was predisposed geneticically, but socially, psychologically and environmentally disposed and he has often been referred to as an anger-retaliatory rapist. Bernardo's compressed childhood anger warped into hatred and rage towards all women, and he manipulated Karla into the role of master and slave.

The progression of manipulation by both Bernardo, the sexual sadist, and Karla ignited the perfect partnering, allowing



them to feed off of each other's "twisted, sick" fantasies in their sadomasocistic relationship, which had nothing to do with love. It was also never about sex — it was about power, control and a need to dominate.

Organized serial killers are difficult to detect as they blend so well into society while planning their attacks. They can seem like normal, average family members while in reality they are carrying out deviant, violent fantasies, as evidenced by such notorious serial killers as Ted Bundy, John Wayne Gacy and Ed Gein. They can go undetected due to this fake persona of being a normal citizen, collegue, father, and active community member, flying under the radar and blending quite well in society.

Case Management Problems Cited in Prior Cases

Systematic or Systemic failure due to multi-juristictional policing was also problematic in the cases of serial killers Clifford Olsen and Robert Picton and a direct result of the breakdown in major case management due in large part, once again, to the "mobility" of these serial killers and, as noted previously, lack of a central repository and a seriously lacking capacity for effective case management. De-escalation of priority when crimes like rape decrease in one area and migrate to another seems to be a repeated pattern as indicated by both FBI profilers and Judge Campbell.

Science, research, education and enforcement are getting better at tracking and analysing these psychopatic deviants by looking at patterns, including geographical migration. We are still a long way from understanding the mind of the serial killer or what makes monsters, but with better education, communication and criminal profiling support, and improved systems such as the Link Case Management System headed up by a Serial Predator Crime Investigation Coordinator (SPCIC), society has made a start. ●●

Dans la partie II de cet article (la partie I a été publiée dans le volume 28.1), Glover entre dans les détails de l'enquête, menée sur six mois par le juge Archie Campbell, en rapport avec les services de police de Toronto et de Niagara et le Centre des sciences judiciaires. Le juge a conclu que cette affaire avait été entravée par des douzaines de rivalités entre les services de police et qu'elle avait été compliquée davantage encore par le recours à de nouvelles techniques de profilage criminel (ou profilage de délinquants) – des techniques commençant à peine à être adoptées par les forces de l'ordre canadiennes. Le manque relatif de technologies de l'information à l'époque, tels des logiciels de gestion des cas et un dépôt central permettant le partage de l'information entre les sphères de compétence, a aussi été mis en cause.

THE
STUDENT SPACE
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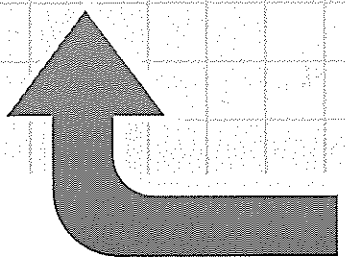
NEXT DEADLINE
FOR ARTICLES SUBMISSION

PROCHAINE DATE DE TOMBÉE
POUR LA SOUMISSION D'UN ARTICLE

SUMMER-ÉTÉ 2013
JULY 8 JUILLET

FALL-AUTOMNE 2013
SEPTEMBER 2 SEPTEMBRE



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NOTICE OF ANNUAL GENERAL MEETING

AVIS DE CONVOCATION ASSEMBLÉE GÉNÉRALE ANNUELLE

TO: All Members of the Canadian Criminal Justice Association
À: Tous les membres de l'Association canadienne de justice pénale

SUBJECT: Annual General Meeting
OBJET: Assemblée générale annuelle

WHEN: Friday, October 4, 2013 (5:00 p.m. - 6:00 p.m.)
QUAND: Vendredi le 4 octobre 2013 (17h00 à 18h00)

WHERE: Hyatt Regency Vancouver, 655 Burrard Street, Vancouver, BC
OÙ : Hyatt Regency Vancouver, 655 rue Burrard, Vancouver (Colombie-Britannique)

AGENDA | ORDRE DU JOUR

1. Adoption of the Agenda | Adoption de l'ordre du jour

2. Adoption of the Minutes of the last Annual General Meeting (October 12, 2012)
Adoption du procès verbal de la dernière assemblée générale annuelle tenue le 12 octobre 2012

3. President's Report | Rapport du président

4. Executive Director's Report | Rapport du directeur général

5. Audited Financial Statements to March 31, 2013 | Rapports financiers des vérificateurs au 31 mars 2013

6. Appointment of Auditors for 2013-2014 | Nomination des vérificateurs pour 2013-2014

7. Adjournment | Ajournement

NOTE: If you wish to receive the documents mentioned in the agenda, please contact us: by email: **ccja-acjp@rogers.com**; by phone: **613.725.3715**; or, by fax: **613.725.3720**.

NOTE: Si vous désirez recevoir les documents pertinents à l'ordre du jour, veuillez svp nous contacter soit à l'adresse courriel **ccja-acjp@rogers.com** ou par téléphone au **613.725.3715** ou télécopieur au **613.725.3720.**

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(Published in the language submitted / Publiés dans la langue dans laquelle ils sont soumis)

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JULY 29-30, 2013 **INTERNATIONAL SERIOUS AND ORGANIZED CRIME (ISOC) 2013 CONFERENCE**

THEME: transnational crime, with the overarching themes of future directions for law enforcement and organised crime, organised crime risks, and policing organised crime.

PLACE: Brisbane Convention & Exhibition Centre on Grey

INFORMATION: https://www.etouches.com/ehome/ISOC2013/home/

JULY 8 - 11, 2013 **2ND INTERNATIONAL INDIGENOUS VOICES IN SOCIAL WORK CONFERENCE**

THEME: *Indigenous Knowledges: Resurgence, implementation and collaboration*

PLACE: Winnipeg, Manitoba, Canada

INFORMATION: http://www.iivsw2013.com/

OCTOBER 17 - 18, 2013 **INTERNATIONAL CONFERENCE**
organized by the Raoul Dandurand Chair at the University of Quebec at Montreal in association with the Association for Borderlands Studies

THEME: Borders, Walls and Security

PLACE: University of Quebec at Montreal, Canada

INFORMATION: www.dandurand.uqam.ca/evenements/appels-de-communications/1124-borders-walls-and-security.html

NOVEMBER 17 - 19, 2013 **2013 NATIONAL RESTORATIVE JUSTICE SYMPOSIUM**
Hosted by YOUCAM and the Canadian Safe School Network

THEME: "to promote, develop and grow restorative justice in Canada and around the world by providing new insights at the National Restorative Justice Symposium in November 2013 - with a focus on Innovation!"

PLACE: Courtyard Downtown Marriot, Toronto

INFORMATION: http://www.adrcanada.ca/resources/news_detail.cfm?announcementId=2177

AUGUST 10-14, 2014 **XVII WORLD CONGRESS OF CRIMINOLOGY OF THE INTERNATIONAL SOCIETY OF CRIMINOLOGY ((ISC)**

THEME: Gangs, Trafficking and Insecurity: Empowering the Community

PLACE: Monterrey, Nuevo Leon, Mexico

CALL FOR PAPERS SUBMISSION DEADLINE: APRIL 1, 2014 (Proposals will be accepted on a rolling, first come first served basis. Therefore it is best to send proposals as soon as possible to ensure that they can be accommodated).

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2013

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CANADIAN CRIMINAL JUSTICE ASSOCIATION AWARDS
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CALL FOR NOMINATIONS FOR THE FOLLOWING AWARDS:

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CERTIFICATE OF APPRECIATION | CERTIFICAT D'APPRÉCIATION

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DEADLINE: AUGUST 1st, 2013
DATE LIMITE: 1er AOÛT, 2013